रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 42] नई दिल्ली, अक्तूबर 12—अक्तूबर 18, 2014, शनिवार/आश्विन 20—आश्विन 26, 1936
No. 42] NEW DELHI, OCTOBER 12—OCTOBER 18, 2014, SATURDAY/ASVINA 20—ASVINA 26, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 29 सितम्बर, 2014

का.आ.2727 .—केंद्रीय सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा (5) की उप-धारा (I) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तराखंड राज्य सरकार, गृह खण्ड-1, देहरादून की सहमति से दिनांक 9 मई, 2014 की अधिसूचना सं. 1124/XX(1)/ 2014-9(2)/2014 के तहत भारतीय दण्ड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 376-घ, 302 तथा 201 और बाल यौन अपराध संरक्षण अधिनियम, 2012 (2012 का अधिनियम सं. 32) की धारा 3 और 4 के तहत पुलिस स्टेशन पाथरी, जिला हरिद्वार, उत्तराखंड में पंजीकृत अपराध संख्या 11/2014 तथा उक्त अपराधों के प्रयास, दुष्प्रेरण, षड्यन्त्रों का अन्वेषण करने के संबंध में अथवा उपरोक्त अपराध के सिलसिले में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और न्यायाधिकार क्षेत्र का विस्तार संपूर्ण उत्तराखंड राज्य पर करती है।

[फा. सं. 228/34/2014-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 29th September, 2014

S.O.2727 .—In exercise of the powers conferred by sub-section (I) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttarakhand, Home Section-1, Dehradun vide Notification No. 1124/XX(1)-2014-9(2)/ 2014 dated 9th May, 2014, hereby extends powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttarakhand for investigation of Case Crime No. 11/2014 under Sections 376-D, 302 and 201 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Sections 3 and 4 of the Protection of Children Sexual Offence Act, 2012 (Act No. 32 of 2012) registered at Police Station Pathri, District Haridwar, Uttarakhand and attempts, abetments and conspiracy in relation to or in connection with the above mentioned offence.

[F. No. 228/34/2014-AVD-II]
RAJIV JAIN, Under Secy.

कोयला मंत्रालय

आदेश

नई दिल्ली, 13 अक्तूबर,2014

का.आ. 2728 .—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पष्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप–धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का0 आ0 2268, तारीख 29 जून, 2012 के, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 7 जुलाई, 2012 में प्रकाषित की गई थी, प्रकाषन पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित 423.08 हेक्टेयर (लगभग) या 1045.00 एकड़ (लगभग) माप वाली भूमि (जिसे इसमें इसके पष्चात् उक्त भूमि कहा गया है) और उक्त भूमि में या उस पर के सभी अधिकार उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए हैं ।

और केन्द्रीय सरकार का यह समाधान हो गया है, कि सेंट्रल कोलफील्ड्स लिमिटेड, राँची, झारखंड (जिसे इसमें इसके पष्चात् सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और षर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद हैं;

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेष देती है कि 423.08 हेक्टेयर (लगभग) या 1045.00 एकड़ (लगभग) माप वाली उपरोक्त उक्त भूमि और इस प्रकार निहित उक्त भूमि में या उस पर के सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 7 जुलाई, 2012 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए सरकारी कंपनी में निहित हो जाऐंगे, अर्थात :–

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मंदो की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) उक्त सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और ऐसे अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाऐंगे और इसी प्रकार इस प्रकार निहित उक्त भूमि के उस पर के अधिकारों के लिए या उसके संबंध में अपील आदि जैसी सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में के पूर्वोक्त अधिकारों के संबंध में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरूद्ध किन्हीं कार्यवाहियों के संबंध में आवष्यक हो;

(4) सरकारी कंपनी के पास केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, इस प्रकार निहित उक्त भूमियों में के पूर्वोक्त अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेषों और शर्तों का, पालन करेगी जो केन्द्रीय सरकार द्वारा, जब कभी आवष्यक हो, उक्त भूमि के विषिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा.सं. 43015 / 21 / 2009–पीआरआईडब्ल्यू–I]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 13th October, 2014

S.O. 2728 .—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 2268 dated the 29th June, 2012, published in the Gazette of India, Part II, section 3, sub-section (ii), dated the 7th July, 2012, issued under sub-section (1) of section 9 of the Coal Bearing areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land measuring 423.07 hectares (approximately) or 1045.00 acres (approximately) as all the rights in or over the said land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act.

And whereas, the Central Government is satisfied that the Central Coalfields Limited, Ranchi, Jharkhand (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby directs that the above said lands measuring 423.07 hectares (approximately) or 1045.00 acres (approximately) and all rights in or over the said lands so vested shall with effect from the 7th July, 2012, instead of continuing to so vest in the Central Government shall vest in the Government company, subject to the following terms and conditions, namely:-

(1) the Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages, and the like,

as determined under the provisions of the said Act;

(2) Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the said Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to Assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc. for or in connection with the rights, in the said land, so vested, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in the said land so vested;

(4) the Government company shall have no power to transfer the aforesaid rights in the said lands so vested, to any other person without the prior approval of the central government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/21/2009- PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

वाणिज्य और उद्योग मंत्रालय

(औद्योगिक नीति एवं संवर्धन विभाग)

नई दिल्ली, 14 अक्तूबर, 2014

का.आ. 2729.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में वाणिज्य और उद्योग मंत्रालय, औद्योगिक नीति एवं संवर्धन विभाग के नियंत्रणाधीन निम्नलिखित कार्यालयों जिनके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्द्वारा अधिसूचित करती है:-

1. संयुक्त मुख्य विस्फोटक नियंत्रक कार्यालय, दक्षिण अंचल, चेन्नई
2. उप मुख्य विस्फोटक नियंत्रक कार्यालय, एरनाकुलम
3. उप मुख्य विस्फोटक नियंत्रक कार्यालय, रायपुर
4. उप मुख्य विस्फोटक नियंत्रक कार्यालय, देहरादून
5. उप मुख्य विस्फोटक नियंत्रक कार्यालय, रांची
6. उप मुख्य विस्फोटक नियंत्रक कार्यालय, विभागीय परीक्षण केन्द्र, गोंडखैरी
7. विस्फोटक नियंत्रक कार्यालय, पटना

[सं. ई-11012/3/2011-हिन्दी]

शुभ्रा सिंह, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Industrial Policy and Promotion)

New Delhi, the 14th October, 2014

S.O. 2729 .—In pursuance of Sub-Rule (4) of the Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following offices, under the administrative control of the Department of Industrial Policy and promotion, whose more than 80% staff have acquired the working knowledge of Hindi—

1. Office of the Joint Chief Controller of Explosives, Southern Region, Chennai
2. Office of the Deputy Chief Controller of Explosives, Ernakulum
3. Office of the Deputy Chief Controller of Explosives, Raipur
4. Office of the Deputy Chief Controller of Explosives, Dehradun
5. Office of the Deputy Chief Controller of Explosives, Ranchi
6. Office of the Deputy Chief Controller of Explosives, Departmetal Experimentation Centre, Gondkhairi
7. Office of the Controller of Explosives, Patna

[No. E-11012/3/2011-Hindi]

SHUBHRA SINGH, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 अक्तूबर, 2014

का.आ. 2730.—राष्ट्रपति, श्री राकेश कुमार को 1.10.2014 (पूर्वाह्न) से केन्द्रीय सरकार औद्योगिक न्यायाधीकरण-सह-श्रम न्यायालय, लखनऊ के पीठासीन अधिकारी के रूप में 4.9.2019 तक अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं । श्री राकेश कुमार केन्द्रीय सरकार औद्योगिक न्यायाधीकरण-सह-श्रम न्यायालय, कानपुर के पीठासीन अधिकारी के पदधारक की अनुपस्थिति में वहां के लिक अधिकारी होंगे ।

[सं. ए-11016/04/2013-सीएलएस-II]

एस. के. सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th October, 2014

S.O. 2730 .—The President is pleased to appoint Shri Rakesh Kumar as Presiding Officer of the Central Government Industrial-cum-labour Court, Lucknow w.e.f. 1.10.2014 (F.N.) for a period up to 4.9.2019 or until further orders, whichever is earlier. Sh. Rakesh Kumar will be link officer of Presiding Officer, Central Government Industrial Tribunal-cum-labour Court, Kanpur in absence of incumbent there.

[No. A-11016/04/2013-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 14 अक्तूबर, 2014

का.आ.2731.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 नवम्बर, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध्र प्रदेश राज्य में नेल्लूर जिले के चिल्लकूर मंडल में काड़िवेडु राज्स्व गांव की सीमा में आने वाले सभी क्षेत्र"।

[सं. एस-38013/66/2014-एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 14th October, 2014

S.O. 2731 .—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st November, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the limits of Revenue Village kadivedu in Chillakur mandal of P.S.R. Nellore District of Andhra Pradesh."

[No. S-38013/66/2014-SS- I]

AJAY MALIK, Under Secy.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2732.—जबकि मैसर्स एल एण्ड टी इंफोटेक लिमिटेड (क्षेत्रीय कार्यालय, थाणे में कोड संख्या एमएच/टीएचएन/424-ए के अंतर्गत) (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में उसके कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी इस प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (इसके पश्चात् स्कीम के रूप में उल्लिखित) के अंतर्गत उपबंधित अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं।

3. अत:, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्यधीन उक्त प्रतिष्ठान को 01-04-1997 से अगली अधिसूचना तक उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/22/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्ही देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटआॅउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कारवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रुप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से

छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिरके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने के वचन भी देगा । यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24. (क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त ना किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर भी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2732 .—Whereas M/s. L&T Infotech Limited [under Code No. MH/THN/424-A in Regional Office, Thane] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees'

Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 1-4-1997 until further notification.

[No. S-35015/22/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and .

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in Section 2(f) of the act, who have been eligible to become members of the Provident Fund' had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident Fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident Fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show-cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2733.—जबकि मैसर्स जे.के. टायर एण्ड इंडस्ट्रीज (विक्रांत प्लांट मैसूर) (कोड संख्या केएन/एमवाईएस/9508 के अंतर्गत मंगलौर क्षेत्रीय कार्यालय में) (एतदुपरांत प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरांत अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं है और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरांत योजना के रूप में संदर्भित) के अंतर्गत सदृश्य स्वरूप के किसी प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अत:, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01-04-2002 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/66/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्ही देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7 के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रॉनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटआॅउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कार्रवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रुप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिनके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के मान पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशितों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा । यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24.(क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा ।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2733.—Whereas M/s. J. K. Tyre and Industries (Vikrant Plant Mysore) Pvt. Ltd. [under Code No. KN/MYS/9508 in Regional Office, Mangalore] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-04-2002 until further notification.

[No. S-35015/66/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be

given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :—

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and .

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in section 2(f) of the act, who have been eligible to become members of the Provident Fund' had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of

Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional P.F. Commissioner concerned directly on receipt of request from the Regional P.F. Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's P.F. accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional P.F. Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident Fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ.2734 .—जबकि मैसर्स टीआरएफ लिमिटेड (क्षेत्रीय कार्यालय, झारखण्ड के कोड संख्या जेएच/1302 के अंतर्गत) (इसके पश्चात् उक्त प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में उसके कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं कुल मिलाकर इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि योजना, 1952 (इसके पश्चात् उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं है।

3. अत:, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01-07-1980 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/65/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्हीं देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा

घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटआॅउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कार्रवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिरके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने के वचन भी देगा । यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24.(क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त ना किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2734 .—Whereas M/s. TRF Limited [under Code No. JH/1302 in Regional Office, Jharkhand] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-07-1980 until further notification.

[No. S-35015/65/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from

the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and .

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in Section 2(f) of the act, who have been eligible to become members of the Provident Fund had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show-cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand

revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2735.—जबकि मैसर्स रसल रेनॉल्डस एसोसिएट्स इंडिया प्राइवेट लिमिटेड [क्षेत्रीय कार्यालय, दिल्ली (दक्षिण) के कोड संख्या डीएल/937516 के अंतर्गत] (इसके पश्चात् उक्त प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् उक्त अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं कुल मिलाकर इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि योजना, 1952 (इसके पश्चात् उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं है।

3. अत:, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01-03-2009 से उक्त योजना के सभी उपबंधों के प्रभाव अधिसूचना जारी होने तक छूट प्रदान करती है ।

[सं. एस-35015/61/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्ही देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और

सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटआॅउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कारवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रुप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिनके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा । यह उन

पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24.(क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त ना किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर भी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2735.—Whereas M/s. Russel Reynolds Associates India Pvt. Limited [under Code No. DL/937516 in Regional Office, Delhi (South)] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-03-2009 until further notification.

[No. S-35015/61/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in Section 2(f) of the act, who have been eligible to become members of the Provident Fund' had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall

inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show-cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take

suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2736.—जबकि मैसर्स एल एण्ड टी एमएचआई वॉयलर्स प्रा. लिमिटेड (क्षेत्रीय कार्यालय, बांद्रा के कोड संख्या एमएच/202246 के अंतर्गत) (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् उक्त अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में उसके कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं कुल मिलाकर इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात् उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं है।

3. अत:, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01-12-2008 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/99/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राश्यिां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्ही देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास

के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय-सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटआॅउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय-सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कारवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रुप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा-अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिनके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय-सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा । यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24.(क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार

होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त ना किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2736.—Whereas M/s. L & T MHI Boilers Pvt. Limited [under Code No. MH/202246 in Regional Office, Bandra] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-12-2008 until further notification.

[No. S-35015/99/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and .

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the

Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in Section 2(f) of the act, who have been eligible to become members of the Provident Fund had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank

of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report along with the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show-cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2737.—केन्द्रीय सरकार, उपदान संदाय अधिनियम, 1972 (1972 का 39) की धारा 3 प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्यांक का.आ. 363 तारीख 4 जनवरी, 2006 का अधिक्रांत करते हुए, निम्नलिखित विनिर्दिष्ट सारणी के स्तम्भ (2) में उल्लिखित अधिकारियों को उक्त सारणी के स्तम्भ (3) में उनके सामने तत्स्थानी प्रविष्टियों में विनिर्दिष्ट क्षेत्र या क्षेत्राधिकार के लिए ऐसी स्थापनाओं के संबंध में, जिनके लिए उक्त अधिनियम की धारा 2 के खण्ड (क) के अधीन केन्द्रीय सरकार समुचित सरकार है, निम्न नियंत्रक प्राधिकारियों को विनिर्दिष्ट करती है ।

सारणी

क्र.सं.	अधिकारी	क्षेत्राधिकार
(1)	(2)	(3)
1.	मुख्य श्रमायुक्त (केन्द्रीय), नई दिल्ली के कार्यालय के सभी सहायक श्रमायुक्त (कें.)	संपूर्ण भारत
2.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), वदोदरा और सभी सहायक श्रमायुक्त (केन्द्रीय), अहमदाबाद क्षेत्र	गुजरात राज्य और दादर और नागर हवेली तथा दमन और दीव केन्द्रीय शासित प्रदेश
3.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), जयपुर और सभी सहायक श्रमायुक्त (केन्द्रीय), अजमेर क्षेत्र	राजस्थान राज्य
4.	आसनसोल क्षेत्र के सभी सहायक श्रमायुक्त (कें.)	पश्चिम बंगाल राज्य में बुर्दवान, बीरभूम, बांकुरा एवं पुरुलिया के सिविल जिले
5.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), बेलारी और सभी सहायक श्रमायुक्त (केन्द्रीय), बंगलूरु क्षेत्र	कर्नाटक राज्य
6.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), राउरकेला और सभी सहायक श्रमायुक्त (केन्द्रीय), भुवनेश्वर क्षेत्र	ओडिशा राज्य
7.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), पुणे और वास्को तथा सभी सहायक श्रमायुक्त (केन्द्रीय), मुंबई क्षेत्र	महाराष्ट्र राज्य (नागपुर, भंडारा, अकोला, बीड, अमरावती वर्धा, बुलढ़ाणा, जलगांव, चंद्रपुर, नांदेड़, गडचिरौली परभनी, लातुर, यवतमाल, ओस्मानाबाद, हिंगोली, गोंडिया और वाशिम के सिविल जिलों को छोड़कर) गोवा राज्य
8.	कोलकाता क्षेत्र के सभी सहायक श्रमायुक्त (केन्द्रीय)	पश्चिम बंगाल राज्य (बुर्दवान, बीरभूम, बांकुरा एवं पुरुलिया के सिविल जिलों को छोड़कर) तथा सिक्किम राज्य एवं अंडमान और निकोबार द्वीपसमूह के केन्द्र शासित क्षेत्र
9.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), तिरुअनंतपुरम और सभी सहायक श्रमायुक्त (केन्द्रीय), कोचीन क्षेत्र	केरल राज्य, लक्षद्वीप संघ राज्य क्षेत्र और पुदुचेरी के माहे संघ राज्य क्षेत्र
10.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), जम्मू और सभी सहायक श्रमायुक्त (केन्द्रीय), चंडीगढ़ क्षेत्र	हिमाचल प्रदेश राज्य, हरियाणा राज्य, पंजाब राज्य, जम्मू एवं कश्मीर राज्य केन्द्र शासित क्षेत्र चंडीगढ़
11.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), रांची और सभी सहायक श्रमायुक्त (केन्द्रीय), धनबाद क्षेत्र	झारखण्ड राज्य के निम्नलिखित जिलों में धनबाद, बोकारो, हजारीबाग, कोडरमा, रांची, लहरदगा, गुमला, सिमडेगा, चतरा, पूर्वी सिंहभूम, पश्चिमी सिंहभूम, गिरीडीह, देवधर, सरायकेला (खरसनवा) और जामतारा
12.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), डिबरुगढ़ और सभी सहायक श्रमायुक्त (केन्द्रीय), गुवाहाटी क्षेत्र	असम राज्य, नागालैण्ड राज्य, मेघालय राज्य, त्रिपुरा राज्य, राज्य, मणिपुर राज्य, मिजोरम राज्य, और अरुणाचल प्रदेश राज्य

(1)	(2)	(3)
13.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), विशाखापट्टनम और सभी सहायक श्रमायुक्त (केन्द्रीय), हैदराबाद क्षेत्र	आन्ध्र प्रदेश राज्य, तेलंगाना राज्य और पुदुचेरी के संघ राज्य क्षेत्र में यनम क्षेत्र
14.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), भोपाल और सभी सहायक श्रमायुक्त (केन्द्रीय), जबलपुर क्षेत्र	मध्य प्रदेश राज्य
15.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), लखनऊ और सभी सहायक श्रमायुक्त (केन्द्रीय), कानपुर क्षेत्र	उत्तर प्रदेश राज्य (सहारनपुर, बिजनौर, मेरठ, गाजियाबाद, बुलंदशहर, मुजफ्फरनगर, बरेली, बदांयु, मुरादाबाद, ज्योतिबा फूले नगर (अमरोहा), पीलीभीत, शाहजहांपुर, रामपुर, बागपत एवं गौतमबुद्ध नगर के सिविल जिलों को छोड़कर)
16.	सभी सहायक श्रमायुक्त (केन्द्रीय), देहरादून क्षेत्र	उत्तराखण्ड राज्य तथा उत्तर प्रदेश राज्य के सहारनपुर, बिजनौर, मेरठ, गाजियाबाद, बुलंदशहर, मुजफ्फरनगर, बरेली, मुरादाबाद, ज्योतिबा फूले नगर (अमरोहा), पीलीभीत, शाहजहांपुर, बदांयु, रामपुर, बागपत एवं गौतमबुद्ध नागरिक सिविल जिले
17.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), मदुरै और सभी सहायक श्रमायुक्त (केन्द्रीय), चेन्नई क्षेत्र	तमिलनाडु राज्य, तथा पुदुचेरी संघ राज्य क्षेत्र (यनम तथा माहे को छोड़कर)
18.	सभी सहायक श्रमायुक्त (केन्द्रीय), नागपुर क्षेत्र	महाराष्ट्र राज्य के नागपुर, भंडारा, अकोला, अमरावती, वर्धा, बुल्धाना, जलगांव, चंद्रपुर, बीड़, गडचिरौली, नांदेड़, परभनी, यवतमाल, ओस्मानाबाद, लातुर, गोंडिया, हिंगोली और वाशिंम के सिविल जिले
19.	सभी सहायक श्रमायुक्त (केन्द्रीय), दिल्ली क्षेत्र	राष्ट्रीय राजधानी क्षेत्र दिल्ली
20.	सभी सहायक श्रमायुक्त (केन्द्रीय), पटना क्षेत्र	बिहार राज्य और झारखण्ड राज्य के गढ़वा, लातेहार, साहेबगंज, पाकुर, दुमका, पलामू और गोड्डा के सिविल जिले
21.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), बिलासपुर और सभी सहायक श्रमायुक्त (केन्द्रीय), रायपुर क्षेत्र	छत्तीसगढ़ राज्य

[सं. एस-42012/1/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 16th October, 2014

S.O. 2737.—In exercise of the powers conferred by Section 3 of the Payment of Gratuity Act, 1972 (39 of 1972) and in supersession of the Government of India, Ministry of Labour notification number S.O. 363 dated the 4th January, 2006, the Central Government hereby appoints the officers mentioned in column (2) of the Table specified hereunder to be the Controlling Authorities for the area or jurisdiction as specified in column (3) of the said Table in relation to all establishments for which the Central Government is the appropriate Government under clause (a) of Section 2 of the said Act.

TABLE

S.No.	Officers	Jurisdiction
(1)	(2)	(3)
1.	All Assistant Labour Commissioners (Central) in the Office of the Chief Labour Commissioner (Central), New Delhi	Whole of India

(1)	(2)	(3)
2.	Regional Labour Commissioner (Central), Vadodara and All Assistant Labour Commissioners (Central) in Ahmedabad region	The State of Gujarat and the Union Territories of Dadra, Nagar Haveli and Daman and Diu
3.	Regional Labour Commissioner (Central), Jaipur and All Assistant Labour Commissioners (Central) in Ajmer region	The State of Rajasthan
4.	All Assistant Labour Commissioners (Central) in Asansol region	The Civil Districts of Burdwan, Birbhum, Bankura and Purulia in the State of West Bengal
5.	Regional Labour Commissioner (Central), Bellary and All Assistant Labour Commissioners (Central) in Bangalore region	The State of Karnataka
6.	Regional Labour Commissioner (Central), Rourkela and All Assistant Labour Commissioners (Central) in Bhubaneswar region	The State of Odisha
7.	Regional Labour Commissioner (Central), Pune and Vasco (Goa) and All Assistant Labour Commissioners (Central) in Mumbai region	The State of Maharashtra (except the Civil Districts of Nagpur, Bhandara, Akola, Beed Amaravati, Wardha, Buldhana, Jalgaon, Chandrapur, Nanded, Gaddchiroli, Parbhanai, Latur, Yeotmal, Osmanabad, Hingoli, Gondia and Washim) and the State of Goa
8.	All Assistant Labour Commissioners (Central) in Kolkata region	The State of West Bengal (except the Civil Districts of Burdwan, Birbhum, Bankura and Purlia), the State of Sikkim and the Union Territory of Andaman and Nicobar Islands
9.	Regional Labour Commissioner (Central), Lakshdweep Thiruvananthapuram and All Assistant Labour Commissioners (Central), Cochin	The State of Kerala and Union Territory of and Mahe in the Union Territory of Puducherry
10.	Regional Labour Commissioner (Central), Haryana, Jammu and All Assistant Labour Commissioners Chandigarh (Central) in Chandigarh region	The States of Himachal Pradesh, Punjab, Jammu and Kashmir and Union Territory of
11.	Regional Labour Commissioner (Central), Ranchi and All Assistant Labour Commissioners (Central) in Dhanbad region	The following Districts of the State of Jharkhand - Dhanbad, Bokaro, Hazaribagh, Kodarma, Ranchi, Lahardaga, Gumla, Simdega, Chatra, East Singhbum, West Singhbhum, Giridih, Deogarh, Sarai Keala Charsanwa) and Jamtara
12.	Regional Labour Commissioner (Central), Dibrugarh and All Assistant Labour Commissioners (Central) in Guwahati region	The State of Assam, Nagaland, Meghalaya, Tripura, Manipur, Mizoram and Arunachal Pradesh
13.	Regional Labour Commissioner (Central), Vishakhapatnam and All Assistant Labour Puducherry Commissioners (Central) in Hyderabad region	The State of Andhra Pradesh, State of Telengana and the area of Yanam in the Union Territory of
14.	Regional Labour Commissioner (Central), Bhopal and All Assistant Labour Commissioners (Central) in Jabalpur region	The State of Madhya Pradesh

(1)	(2)	(3)
15.	Regional Labour Commissioner (Central), Lucknow and All Assistant Labour Commissioners (Central) in Kanpur region	The State of Uttar Pradesh (except the Civil Districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Badaun, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahajahanpur, Rampur, Baghpat and Gautam Budh Nagar
16.	All Assistant Labour Commissioners (Central) in Dehradun region	The State of Uttarakhand and the Civil Districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahajahanpur, Badaun, Rampur, Baghpat and Gautam Budh Nagar in the State of Uttar Pradesh
17.	Regional Labour Commissioner (Central), Madurai and All Assistant Labour Commissioners (Central) in Chennai region	The State of Tamil Nadu and Union Territory of Puducherry (except Yanam and Mahe)
18.	All Assistant Labour Commissioners (Central), Nagpur region	The Civil Districts of Nagpur, Bhandara, Akola, Amaravati, Wardha Buldhana, Jalgaon, Chandrapur, Beed, Gaddchiroli, Nanded, Parbhani, Yeotmal, Osmanabad, Latur, Gondia, Washim, Hingoli in the State of Maharashtra
19.	All Assistant Labour Commissioners (Central), Delhi region	National Capital Territory of Delhi
20.	All Assistant Labour Commissioners (Central) in Patna region	The State of Bihar and the Civil Districts of Garhwa, Latehar, Sahibganj, Pakur, Dumka, Palamu and Godda in the State of Jharkhand
21.	Regional Labour Commissioner (Central), Bilaspur and All Assistant Labour Commissioners (Central) in Raipur region	The State of Chhattisgarh.

[No. S-42012/1/2014-SS-II]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2738 .—केन्द्रीय सरकार, उपदान संदाय अधिनियम, 1972 (1972 का 39) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्यांक का.आ. 362 तारीख 4 जनवरी, 2006 का अधिक्रांत करते हुए, निम्नलिखित विनिर्दिष्ट सारणी के स्तम्भ (2) में उल्लिखित अधिकारियों को उक्त सारणी के स्तम्भ (3) में उनके सामने तत्स्थान प्रविष्टियों में यथा-विनिर्दिष्ट क्षेत्र या क्षेत्राधिकार के लिए ऐसी स्थापनाओं के संबंध में, जिनके लिए उक्त अधिनियम की धारा 2 के खण्ड (क) के अधीन केन्द्रीय सरकार समुचित सरकार है, निम्न अपीलीय प्राधिकारियों को विनिर्दिष्ट करती है ।

सारणी

क्र.सं.	अधिकारी	क्षेत्राधिकार
(1)	(2)	(3)
1.	मुख्यालय, मुख्य श्रमायुक्त (केन्द्रीय), नई दिल्ली के कार्यालय के सभी उप मुख्य श्रमायुक्त (केन्द्रीय)	संपूर्ण भारत
2.	उप मुख्य श्रम आयुक्त (केन्द्रीय), अहमदाबाद	गुजरात राज्य और दादर और नागर हवेली तथा दमन और दीव केन्द्रीय शासित प्रदेश

(1)	(2)	(3)
3.	उप मुख्य श्रम आयुक्त (केन्द्रीय), अजमेर	राजस्थान राज्य
4.	उप मुख्य श्रम आयुक्त (केन्द्रीय), आसनसोल	पश्चिम बंगाल राज्य में बुर्दवान, बीरभूम, बांकुरा एवं पुरुलिया के सिविल जिले
5.	उप मुख्य श्रम आयुक्त (केन्द्रीय), बंगलूरु	कर्नाटक राज्य
6.	उप मुख्य श्रम आयुक्त (केन्द्रीय), भुवनेश्वर	ओडिशा राज्य
7.	उप मुख्य श्रम आयुक्त (केन्द्रीय), मुंबई	महाराष्ट्र राज्य (नागपुर, भंडारा, अकोला, बीड, अमरावती वर्धा, बुल्ढ़ाणा, जलगांव, चंद्रपुर, नांदेड़, गडचिरौली परभनी, लातुर, यवतमाल, ओस्मानाबाद, हिंगोली, गोंडिया और वाशिम के सिविल जिलों को छोड़कर) गोवा राज्य
8.	उप मुख्य श्रम आयुक्त (केन्द्रीय), कोलकाता	पश्चिम बंगाल राज्य (बुर्दवान, बीरभूम, बांकुरा एवं पुरुलिया के सिविल जिलों को छोड़कर) तथा सिक्किम राज्य एवं अंडमान और निकोबार द्वीपसमूह के केन्द्र शासित क्षेत्र
9.	उप मुख्य श्रम आयुक्त (केन्द्रीय), कोचीन	केरल राज्य, लक्षद्वीप संघ राज्य क्षेत्र और पुदुचेरी के माहे संघ राज्य क्षेत्र
10.	उप मुख्य श्रम आयुक्त (केन्द्रीय), चंडीगढ़	हिमाचल प्रदेश राज्य, हरियाणा राज्य, पंजाब राज्य, जम्मू एवं कश्मीर राज्य केन्द्र शासित क्षेत्र चंडीगढ़
11.	उप मुख्य श्रम आयुक्त (केन्द्रीय), धनबाद	झारखण्ड राज्य निम्नलिखित जिलों में धनबाद, बोकारो, हजारीबाग, कोडरमा, रांची, लहरदगा, गुमला, सिमडेगा, चतरा, पूर्वी सिंहभूम, पश्चिमी सिंहभूम, गिरीडीह, देवधर, सरायकेला (खरसनवा) और जामतारा
12.	उप मुख्य श्रम आयुक्त (केन्द्रीय), गुवाहाटी	असम राज्य, नागालैण्ड राज्य, मेघालय राज्य, त्रिपुरा राज्य, मणिपुर राज्य, मिजोरम राज्य, और अरुणाचल प्रदेश राज्य
13.	उप मुख्य श्रम आयुक्त (केन्द्रीय), हैदराबाद	आन्ध्र प्रदेश राज्य, तेलंगाना राज्य और पुदुचेरी के संघ राज्य क्षेत्र में यनम क्षेत्र
14.	उप मुख्य श्रम आयुक्त (केन्द्रीय), जबलपुर	मध्य प्रदेश राज्य
15.	उप मुख्य श्रम आयुक्त (केन्द्रीय), कानपुर	उत्तर प्रदेश राज्य (सहारनपुर, बिजनौर, मेरठ, गाजियाबाद, बुलंदशहर, मुजफ्फरनगर, बरेली, बदांयु, मुरादाबाद, ज्योतिबा फूले नगर (अमरोहा), पीलीभीत, शाहजहांपुर, रामपुर, बागपत एवं गौतमबुद्ध नगर के सिविल जिलों को छोड़कर)
16.	उप मुख्य श्रम आयुक्त (केन्द्रीय), देहरादून	उत्तराखण्ड राज्य तथा उत्तर प्रदेश राज्य के सहारनपुर, बिजनौर, मेरठ, गाजियाबाद, बुलंदशहर, मुजफ्फरनगर, बरेली, मुरादाबाद, ज्योतिबा फूले नगर (अमरोहा), पीलीभीत, शाहजहांपुर, बदांयु, रामपुर, बागपत एवं गौतमबुद्ध नगर नागरिक सिविल जिले

(1)	(2)	(3)
17.	उप मुख्य श्रम आयुक्त (केन्द्रीय), चेन्नई	तमिलनाडु राज्य, तथा पुदुचेरी संघ राज्य क्षेत्र (यनम तथा माहे को छोड़कर)
18.	उप मुख्य श्रम आयुक्त (केन्द्रीय), नागपुर	महाराष्ट्र राज्य के नागपुर, भंडारा, अकोला, अमरावती, वर्धा, बुल्धाना, जलगांव, चंद्रपुर, बीड़, गडचिरौली, नांदेड, परभनी, यवतमाल, ओस्मानाबाद, लातुर, गोंडिया, हिंगोली और वाशिम के सिविल जिले
19.	उप मुख्य श्रम आयुक्त (केन्द्रीय), नई दिल्ली	राष्ट्रीय राजधानी क्षेत्र दिल्ली
20.	उप मुख्य श्रम आयुक्त (केन्द्रीय), पटना	बिहार राज्य और झारखण्ड राज्य के गढ़वा, लातेहार, साहेबगंज, पाकुर, दुमका, पलामू और गोड्डा के सिविल जिले
21.	उप मुख्य श्रम आयुक्त (केन्द्रीय), रायपुर	छत्तीसगढ़ राज्य

[सं. एस-42012/1/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 16th October, 2014

S.O. 2738 .—In exercise of the powers conferred by sub-section (7) Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972) and in supersession of the Government of India, Ministry of Labour notification number S.O. 362 dated the 4th January, 2006, the Central Government hereby specifies the officers mentioned in column (2) of the Table specified hereunder to be the Appellate Authority for the area or jurisdiction as specified in column (3) of the said Table in relation to all establishments for which the Central Government is the appropriate Government under clause (a) of Section 2 of the said Act.

TABLE

S.No.	Officers	Jurisdiction
(1)	(2)	(3)
1.	All Deputy Chief Labour Commissioners (Central) in the Head Quarters, Office of the Chief Labour Commissioner (Central), New Delhi	Whole of India
2.	Deputy Chief Labour Commissioner (Central), Ahmedabad	The State of Gujarat and the Union Territories of Dadra, Nagar Haveli and Daman and Diu
3.	Deputy Chief Labour Commissioner (Central), Ajmer	The State of Rajasthan
4.	Deputy Chief Labour Commissioner (Central), Asansol	The Civil Districts of Burdwan, Birbhum, Bankura and Purulia in the State of West Bengal
5.	Deputy Chief Labour Commissioner (Central), Bangalore	The State of Karnataka
6.	Deputy Chief Labour Commissioner (Central), Bhubaneswar	The State of Odisha
7.	Deputy Chief Labour Commissioner (Central), Mumbai	The State of Maharashtra (except the Civil Districts of Nagpur, Bhandara, Akola, Beed, Amaravati, Wardha, Buldhana, Jalgaon, Chandrapur, Nanded, Gaddchiroli, Parbhanai, Latur, Yeotmal, Osmanabad, Hingoli, Gondia and Washim) and the State of Goa

(1)	(2)	(3)
8.	Deputy Chief Labour Commissioner (Central), Kolkata	The State of West Bengal (except the Civil Districts of Burdwan, Birbhum Bankura and Purlia in the State of West Bengal), State of Sikkim and the Union Territory of Andaman and Nicobar Islands
9.	Deputy Chief Labour Commissioner (Central), Cochin	The State of Kerala and Union Territory of Lakshdweep and Mahe in the Union Territory of Puducherry
10.	Deputy Chief Labour Commissioner (Central), Chandigarh	The State of Himachal Pradesh, Punjab, Haryana, Jammu and Kashmir and Union Territory of Chandigarh
11.	Deputy Chief Labour Commissioner (Central), Dhanbad	The following Districts of the State of Jharkhand - Dhanbad, Bokaro, Hazaribagh, Kodarma, Ranchi, Lahardaga, Gumla, Simdega, Chatra, East Singhbum, West Singhbhum, Giridih, Deogarh, Sarai Keala (Charsanwa) and Jamtara
12.	Deputy Chief Labour Commissioner (Central), Guwahati	The State of Assam, Nagaland, Meghalaya, Tripura, Manipur, Mizoram and Arunachal Pradesh
13.	Deputy Chief Labour Commissioner (Central), Hyderabad	The State of Andhra Pradesh, State of Telengana and Yanam of Union Territory of Puducherry
14.	Deputy Chief Labour Commissioner (Central), Jabalpur	The State of Madhya Pradesh
15.	Deputy Chief Labour Commissioner (Central), Kanpur	The State of Uttar Pradesh [except the Civil Districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly Badaun, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahajahanpur, Rampur, Baghpat and Gautam Budh Nagar]
16.	Deputy Chief Labour Commissioner (Central), Dehradun	The State of Uttarakhand and the Civil Districts of Saharanpur, Bijnore, Meerut, Ghaziabad, Bulandshahar, Muzaffar Nagar, Bareilly, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahajahanpur, Badaun, Rampur, Baghpat and Gautam Budh Nagar in the State of Uttar Pradesh
17.	Deputy Chief Labour Commissioner (Central), Chennai	The State of Tamil Nadu and Union Territory of puducherry (except Yanam and Mahe)
18.	Deputy Chief Labour Commissioner (Central), Nagpur	The Civil Districts of Nagpur, Bhandara, Akola, Amaravati, Wardha Buldhana, Jalgaon, Chandrapur, Beed, Gaddchiroli, Nanded, Parbhani, Yeotmal, Osmanabad, Latur, Gondia, Washim, Hingoli and in the State of Maharashtra
19.	Deputy Chief Labour Commissioner (Central), New Delhi	National Capital Territory of Delhi
20.	Deputy Chief Labour Commissioner (Central), Patna	The State of Bihar and the Civil Districts of Garhwa, Latehar, Sahibganj, Pakur, Dumka, Palamu and Godda in the State of Jharkhand
21.	Deputy Chief Labour Commissioner (Central), Raipur	The State of Chhattisgarh.

[No. S-42012/1/2014-SS-II]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2739.—जबकि मैसर्स एल एण्ड टी हाईड्रो कार्बन इंजीनियरिंग लिमिटेड (कोड संख्या एमएच/टीएचएन/206169 के अंतर्गत थाणे क्षेत्रीय कार्यालय में) (एतदुपरांत प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरांत अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं है और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरांत योजना के रूप में संदर्भित) के अंतर्गत सदृशय स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अत:, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्यधीन उक्त प्रतिष्ठान को 01-04-2002 से अगली अधिसूचना तक उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/73/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से :—

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा ।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं; यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा ।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्ही देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा ।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा ।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा ।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा ।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा ।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वत: लागू किया जाएगा ।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा ।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे ।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शाने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे ।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को नि:शुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटऑउट नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा ।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे ।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डिक कार्रवाई के भागी होंगे ।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा ।

18.(क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे ।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा ।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए ।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए । प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा ।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसे निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे । स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा ।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिनके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के मान पर किए गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं । तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों ।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं ।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशितों पर उनके साथ-साथ बाध्यकारी होगा ।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने कि स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा । यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा ।

24.(क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा । जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे ।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए । तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में

इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी ।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए ।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों ।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी ।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा ।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णत: स्वामित्व वाली हो या नहीं इत्यादी के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए ।

30. एक ही भविष्य निधी ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाइयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे ।

New Delhi, the 16th October, 2014

S.O. 2739.—Whereas M/s. L&T Hydrocarbon Engineering Limited [under Code No. MH/THN/206169 in Regional Office, Thane] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-04-2013 until further notification.

[No. S-35015/73/2014-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean :

(i) In relation to an establishment, which is a factory, the owner or occupier of the factory; and .

(ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in Section 2(f) of the act, who have been eligible to become members of the Provident Fund' had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account

of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian

of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident Fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show-cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/ responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2740.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कंट्रोलेरेट ऑफ क्वालिटी अस्सुरेन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/9/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2014 को प्राप्त हुआ था।

[सं. एल-14011/45/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2740 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Case No. CGIT/LC/R/9/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Controllerate of Quality Assurance, Jabalpur and their workman, which was received by the Central Government on 08.10.2014.

[No. L-14011/45/2000-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/9/04

PRESIDING OFFICER: SHRI R. B. PATLE

General Secretary,
Workers Union C.I.W,
C/o Shri S. Banerjee,
310/3, New Colony,
Jabalpur ...Workman/Union

Versus

Controller,
Controllerate of Quality Assurance,
Jabalpur ...Management

AWARD

Passed on this 22nd day of September, 2014

1. As per letter dated 3-2-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/45/2000-IR(DU). The dispute under reference relates to:

> "Whether the claim of the Workers Union CIW, Jabalpur that the seniority of Shri Jharilal Chakravarty, Draftsman Grade III has not been fixed correctly by the management of Controller of Quality Assurance (W), Jabalpur and that he has been denied promotion to Draftsman Grade II ignoring his seniority is factually correct? If so, what relief is the disputant concerned entitled to?"

2. After receiving reference, notices were issued to the parties. Union on behalf of workman Jharilal Chakravarty submitted statement of claim at page 5/1 to 5/3. Case of Union is that workman Jharilal is working on post of Draftsman Grade III in office of management of IInd party. The name of above workman is shown at Sl. No. 26 in Seniority List. Names of Shri S. Bhattacharya and Pradeep K. Das are shown at Sl. No. 24, 25. Ist party workman was given seniority on 1-7-90 as draftsman Grade III. Shri S.Bhattacharjee and Pradeep Das were given seniority from 2-8-90 and 24-10-90 respectively. As such both of them are junior to him. The next promotion from Draftsman Grade-III is Draftsman Grade-II. The promotion is on basis of seniority cum merit. Since workman was placed incorrectly in seniority list below his juniors, his juniors were promoted.

3. It is submitted that series of representations about his grievance by workman were not responded. The seniority list was not corrected. On such ground, workman prays for directions to promote him on post of Draftsman Grade II from the date his juniors were promoted.

4. IInd party filed Short Written Statement at Page 9/1. It is submitted that during pendency of the case the seniority roll of Draftsman has been revised. That seniority of workman is fixed above Shri P.K.Das. It is further submitted that the seniority roll reflects the anamoly has been corrected in Revised seniority list. That dispute raised has become infructuous and deserves to be dismissed.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) "Whether the action of the management of Whether the claim of the Workers Union CIW, Jabalpur that the seniority of Shri Jharilal Chakravarty, Draftsman Grade III has not been fixed correctly by the management of Controller of Quality Assurance (W), Jabalpur and that he has been denied promotion to Draftsman Grade II ignoring his seniority is factually correct?	Seniority List is revised and workman is promoted considering his seniority, therefore dispute ceized to exist.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him as claim is already satisfied.

REASONS

6. Case of Ist party workman is that seniority list was not correctly maintained. His juniors were shown above him. His juniors were promoted. IInd party submits that seniority list is revised and anamoly has been corrected.

7. Workman filed affidavit of his evidence covering his contentions in statement of claim. That Mr. Bhattacharya and Pradeep Das junior to him were shown above in the seniority list and they were promoted. His representations were not considered. In his cross-examination, workman says his seniority list dated 1-7-90 is revised. He is shown senior to Pradeep Kumar. Again workman says that said seniority list was not implemented. In his further cross-examination, workman says that in revised seniority list, Pradeep Kumar was shown at Sl. No. 31 and his name was shown at Sl. No. 61. he admits that he is promoted to Draftsman Grade-II. He is given promotion from the date of his promotion of his juniors. Thus evidence in cross-examination of workman shows that seniority list is revised and he is given promotion from the date his juniors are promoted.

8. Management's witness Shri R.N.Rawat filed affidavit supporting contentions of workman that old seniority roll was revised. In his cross-examination, he denies that Shri S. Bhattacharya and Pradeep Kumar Das are junior to workman. The denial of the management's witness is inconsistent with the contentions raised in Written Statement and therefore needs to be ignored. The evidence discussed above shows that seniority list has been revised and grievance of workman in the matter of promotion has been exceeded. Thereby the dispute ceized to exist. Accordingly, I record my finding in Point No.1.

9. In the result, award is passed as under:-

(1) The seniority list of Draftsman Grade III is revised and workman is given promotion from the date of promotion of his juniors. The dispute ceized to exist.

(2) Workman is not entitled to any relief

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ.2741 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 9/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2014 को प्राप्त हुआ था।

[सं. एल-40012/103/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2741 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 9/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 08.10.2014.

[No. L-40012/103/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 9 of 2011

Reference No. L-40012/103/2010-IR(DU)
dated 05.05.2011

Shri Iqbal Singh son of Shri Sukhdev Singh, resident of Golewala Patti Malooka, Tehsil & District Faridkot C/o BSNL Casual and Contract Workers Union, Punjab HO Trade Union Council, Kamal Cinema, Malerkotla Sangrur ...Workman

Versus

1. The General Manager, Telecom, Bharat Sanchar Limited, Ferozepur
2. The CGM, Telephone, Bharat Sanchar Nigam Ltd., Sector-34, Chandigarh
3. The D.E.M, Bharat Sanchar Nigam Ltd., Faridkot ...Respondents

Appearances :

For the Workman : None

For the Management : Sh. Anish Babbar advocate.

AWARD

Passed On:-1.10.2014

Government of India Ministry of Labour vide notification No. L-40012/103/2010/IR(DU)dated 05.05.2011 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the demand of Shri Iqbal Singh son of Shri Sukhdev Singh from the management of General Manager, BSNL, Ferozepur/CGM Telephone,BSNL, Sector-34, Chandigarh/DEM BSNL, Faridkot for reinstatement in service w.e.f. 25.3.2010 is legal and justified? What benefits the workman is entitled for and what directions are necessary in the matter?"

2. Case repeated called. Despite repeated opportunities, none appeared for the workman. The case was fixed for filing of affidavit in evidence by the workman. Despite last opportunity and several opportunities thereafter, neither workman appeared nor any affidavit in evidence has been filed. Representatives of the respondents are present. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off and answered against the workman as no evidence has been produced on behalf of the workman.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
1.10.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2742 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत अर्थ मूवर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. सीजीआईटी/एनजीपी/23/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.10.2014 को प्राप्त हुआ था।

[सं. एल-14011/07/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2742 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Case No. CGIT/NGP/23/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharat Earth Movers Limited and their workman, which was received by the Central Government on 08.10.2014.

[No. L-14011/07/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/23/2011

Date: 23.09.2014

Party No.1 (a) : The Regional Manager,
Bharat Earth Movers Limited,
Cement Road, Nagpur

(b) The Assistant Manager,
Bharat Earth Movers Limited,
Cement Road, Nagpur

(c) The Director,
Bharat Earth Movers Limited,
23/1, Chowtha Main, S R Nagar,
Bangalore-560027

Party No. 2 : Shri Roopchand,
S/o Shri Ramaasare Grawkar,
R/o House No. 32, Near water Tank, Pandharabadi,
Nagpur

AWARD

(Dated: 23rd September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bharat Earth Movers Limited and their workman, Shri Roopchand, for adjudication, as per letter No.L-14011/07/2011-IR (DU) dated 03.10.2011, with the following schedule:-

> "Whether the action of the management of Bharat Earth Movers Limited, Nagpur, in terminating the services of Shri Roopchand from February, 2006 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Roopchand,('the workman" in short), filed the statement of claim and the management of Bharat Earth Movers Limited , ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that party no.1 is a public limited company and he was employed as a sweeper by the party No.1 in 1990 and continued to work as such to the satisfaction of party no.1 till the date of his termination in February, 2006 and at the time of his appointment, it was explained to him that he was to take care of all the cleaning works in the office of the party no.1 and party no.1 issued a certificate in support of his good work and he was being entrusted extra work apart from the assigned work and he used to do all the works as directed by the party no.1 and he was also being asked to clean the personal houses of the officers and as such, he asked the party no.1 to give a list of works to be performed by him

and accordingly, a list was prepared and his signature was taken in token of his acceptance of the same and on 13.10.2005, one of the officers of the office of the Assistant Manager asked him to visit the bungalow of the Regional Manager and as per the direction, he visited the bungalow of the Regional Manager and being asked by the wife of the Regional Manager, he cleaned the premises of the bungalow and while leaving the bungalow, he was asked to clean the premises daily and though the said work was not included in the works assigned to him, he was compelled to do the same under the threat of termination of his services in case of his refusal and he was left with no choice then to do the said extra work without any extra payment being made to him and he was exploited, victimized and made victim of unfair labour practice.

It is further pleaded by the workman that the post of sweeper was a permanent post and one Hadke was working as the permanent sweeper and the said Hadke was promoted and after his promotion, Hadke left the job and the post of sweeper fell vacant in or around 1997 and since then, the post was never filled in and he being the next person due to be appointed in the said post, he ought to have been given permanent appointment in the said post, but party no.1 failed to do so, inspite of the fact that he had completed 240 days of continuous service and time and again, he had requested for the same and party no.1 indulged in unfair labour practice by depriving him of his claim for permanent appointment to the post of sweeper since 1990 or at least since 1997, when the post of sweeper fell vacant and his initial appointment was with an assurance of appointing him in permanent post and though the work was continuously and throughout the year available, the party no.1 illegally continued him as a temporary employee for almost 16 years, which was illegal and against the principles of natural justice and soon after receipt of the notice of the case filed by him before the labour court, Nagpur, the party no.1 terminated his service orally in February, 2006 and he was instructed orally not to attend the office, without assigning any reason or compliance of the legal provisions and without service of any notice as required under section 25-F of the Act.

The workman has prayed for his reinstatement in service with continuity and full back wages and to direct the party no.1 to appoint him on the permanent post.

3. The party no.1 in the written statement has pleaded inter-alia that it is a Government owned Public Limited company and the reference is not maintainable as there was no employer and employee relationship between it and the workman was engaged on daily wages basis for 2-3 hours for sweeping of the office premises on a private contract and the workman was neither selected nor appointed by it at any point of time, as per the Rules and Regulations required for appointment of regular employees of the Central Government and the workman has challenged the alleged termination dated 14.11.2005, almost after a gap of six years and as such, the reference is not maintainable on the ground of delay and latches and the statement of claim filed under section 10 of the Act is totally misconceived, as there is no such procedure or provision in the Act to file the complaint under the said section of the Act and therefore, the same is liable to be dismissed.

It is further pleaded by party no.1 that the workman, who was engaged on private contract, abandoned the service himself for the reason best known to him and at the time of the engagement of the workman, he was explained the works to be performed by him and he was directed to complete the entire work of sweeping before 9.00 AM, daily, since the opening hours of its office is 9 AM and the certificate was issued by the then Assistant Manager, Shri V.G. Nair in his personal capacity on demand by the workman and cleaning of the houses of the officers was the part of the contract and the workman was not entrusted with extra work and he was not subjected to any compulsion and the duty chart dated 29.08.2005 was signed by one of its officers and not by the appointing authority of the company and the said contract was accepted by the workman on 30.08.2005 and the contract amount was paid to the workman on voucher as per the agreement and there was no continuous employment of the workman from 1990 to February, 2006 and he was not working continuously with it from 1990 to February, 2006 and perusal of the application dated 30.06.1990, placed by the workman on record in support of his claim of working from 1990, it can be found that the date, "30.06.1990" is in a different ink than the ink used for writing the application and such fact shows that the date was subsequently inserted to show the back dated contract of the workman with it and in the complaint no. 311/2005 filed by the workman before the Labour Court, Nagpur, the workman had mentioned his age as 33 years as on 14.11.2005 and if the workman was aged about 33 years on 14.11.2005, then he must be aged about 15-16 years in 1990 and no government company would appoint a person aged about 15-16 years old in contravention of service rules and therefore, the entire submissions of the workman are false, fabricated and concocted.

The further case of party no.1 is that Shri Hadke was never appointed as a sweeper and as such, there was no question of lying of any permanent vacant post of sweeper since 1997 and the workman did not work for more than 240 days in each calendar year and he has no right to claim permanency and there is no sanctioned post of sweeper to reinstate the workman and the workman was never given any assurance of permanency and there is no question of its adopting any unfair labour practice and provisions of section 25-F of the Act are not

applicable to personal contract of sweeping and the entire complaint is vague and there is no specific date of termination and no blanket direction of reinstatement can be granted without specifying the date of termination and the workman is not entitled to any relief.

4. It is to be mentioned that no rejoinder was filed by the workman, even though, he was given sufficient opportunities for the same.

5. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claims.

The workman has examined himself as a witness in support of his case.

One Shri Vikas Chandra Kureel has been examined as a witness on behalf of the party no.1.

6. The workman in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that the office hours of party no.1 were from 8.45 AM to 5.00AM and his working hours were from 6.00 AM to 2.00 PM and no written order of appointment was issued in his favour by party no.1 and payment of wages being made to him on vouchers and he had not signed the salary register maintained for making payment of salary to the permanent employees of party no.1. The workman has denied the suggestions that he was engaged by party no.1 on contract basis and party no.1 terminated his contract, when his services were not required and his contract was terminated in 2005, so he approached the Labour Court, Nagpur for redress and in 2010, he withdrew the complaint case filed before the Labour Court.

7. The evidence of the witness for party no.1 on affidavit is in the same line that has been taken in the written statement by party no.1. In his cross-examination, the witness for the party no.1 has stated that the workman was engaged by the management as a sweeper and he was engaged as such in the year 1990 at first and Hadke was a permanent helper-cum-chowkidar in the office of Nagpur.

8. In the written notes of argument, the learned advocate for the workman submitted that the workman was appointed as a sweeper by party no.1 in the year 1990 and he worked with party no.1 continuously till February, 2006 and the workman had completed 240 days of work in every year and though the appointment of the workman was against a vacant permanent post of sweeper, which is lying vacant since 1997, the party no.1 did not make the workman permanent, by adopting unfair labour practice and terminated his services in February, 2006 orally, without compliance of the mandatory provisions of Section 25-F of the Act, after the approach of the workman the labour court, Nagpur for redress and the termination of the workman is illegal and the workman is entitled for reinstatement in service with continuity and full back wages.

9. Per contra, it was submitted by the learned advocate for the party no.1 in the written notes of argument that the workman had earlier filed ULPA complaint no. 311/2005 in the 2nd Labour Court, Nagpur and persuaded till final hearing and ultimately, he withdrew the same vide application dated 08.01.2010 and thereafter, he filed this proceedings directly before this Tribunal and no conciliation proceedings were initiated by the workman as required under the Act and no reference was made and as such, this complaint filed by the workman is not maintainable.

It was further submitted by the learned advocate for the party no.1 that the complaint filed by the workman is hopelessly time-barred and as there was no application for condonation of delay, the same on that count is not maintainable.

The advocate for the management also submitted that in the statement of claim, no allegation has been made by the workman that party no.1 is an industry and he is a workman as defined under section 2 (j) and 2 (s) of the Act respectively and in absence of such averments and in absence of any evidence in respect of the same, the proceeding is not maintainable and the workman was engaged by Shri V.G. Nair, the Assistant Manager by personal contract for sweeping the office premises and the said contract was abandoned by the workman himself for reasons best known to him and there was no employer and employee relationship between the parties and the workman has given distorted version about his alleged termination and in ULPA complaint no. 311/2005, the workman had mentioned that he was orally terminated in October, 2005 and if actually, he was terminated in February, 2006 as claimed by him in this proceedings, then there was no reason for him to file ULPA complaint no. 311/2005 and the entire case of the workman is false and untenable and liable to be rejected and the workman is not entitled to any relief.

10. So far the first contention raised by the learned advocate for the party no.1 regarding non-maintainability of the proceedings due to filing of the statement of claim directly without initiation of any conciliation proceedings is concerned, in fairness of the matter, the same is required to be mentioned and rejected. It is clear from the letter of reference issued by the Central Government for adjudication of the industrial dispute to this Tribunal that on submission of the failure report of conciliation by the Assistant Labour Commissioner (Central), Nagpur, the reference was made. The workman also in paragraph 15 of his statement of claim has categorically mentioned that; "the Hon'ble Labour Court was pleaded to allow the complainant to with draw the complaint for filing it before the proper authority which was received by the Assistant

Labour Commissioner (Central), Seminary Hills on 10.03.2010". There is no denial of such pleadings by the party no. 1 in the written statement. The materials on record clearly show that a conciliation proceedings was initiated before the competent authority by the workman and on failure of the conciliation, the reference was made by the Government. Hence, there is no force in the contention raised in this regard by the learned advocate for the party no.1.

11. The second contention raised by the learned advocate for the party no.1 is that the reference suffers from delay and latches and the same has been made as an afterthought. Elaborating the said contention, it was submitted that the workman filed ULPA complaint no. 311/2005 in the Labour Court, Nagpur and persuaded the same till final hearing and ultimately withdrew the same by filing the application dated 08.01.2010 and the statement of claim in this reference was filed on 30.11.2011 and there was more than 1 ½ years of delay in filing the case and the delay has not been explained and no application for condonation of delay has been filed and as such, the reference is not maintainable.

At this juncture, I think it apposite to mention that it is settled beyond doubt in a string of decisions by the Hon'ble Apex Court that the provisions of the limitation Act are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground to delay alone. Even in a case where the delay is shown to be existing the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

Keeping in view the settled principles as mentioned above, now, the present case is to be considered. In this case, though the party no.1 has taken the plea of delay, there is no pleading that due to the delay, any prejudice was caused to it or that due to the delay, material evidence relevant to the adjudication is being lost and rendered unavailable.

Moreover, from the materials on record, it is found that apprehending termination from service and claiming appointment on the permanent post, the workman filed, ULPA complaint no. 311/2005 and persuaded the same in good faith and he withdrew the same by filing an application dated 08.01.2010 and after such withdrawal, he initiated the conciliation proceeding before the ALC (C), Nagpur and the ALC (C), Nagpur submitted the failure report to the Central Government vide his letter no. ALCN/8/ (32)/2010-ID dated 07.03.201 and thereafter, Central Government referred the dispute to this Tribunal for adjudication vide letter dated 03.10.2011. So, there is no delay in making the reference and there is no force in the contention raised by the learned advocate for the party no.1 in that regard.

12. The next contention raised by the learned advocate for the party no.1 is that the workman has not made any pleading in the statement of claim that he is a workman and party no.1 is an industry as per the definition of "workman" and "industry" given in section 2(s) and 2 (j) of the Act and in absence of such pleading and evidence on record, the reference is not maintainable.

Admittedly, the workman has not made such pleading in the statement of claim. It is well settled that pleadings before the Tribunal have not be read strictly. It is to be mentioned here that party no.1 has also not made any pleadings in the written statement that it is not an industry and the workman is not a "workman" as defined under section 2(s) of the Act. In absence of such pleadings by the party no.1 in the written statement, the contention raised by the learned advocate for the party no.1 cannot be considered.

13. It is necessary to mention here that in the argument, some untrue submissions were made by the learned advocate for party no.1 that the workman is not sure of the date of his termination, as in ULPA Complaint No. 311/2005, it was claimed by him that he was orally terminated in October, 2005, but in this case, he has claimed that he was terminated in February, 2006 and in ULP complaint No. 311/2005, the workman had mentioned his age to be 33 years, so he was 15 to 16 years in 1990, so there was no question of his appointment by party no.1, which is a Government owned Public Limited Company. On perusal of the complaint No. 311/2005filed by the workman, Ext. M-I, it is found that in the said complaint, the workman had no where pleaded that he was terminated from services orally by party no.1 in October, 2005. Rather, the prayer of the workman in the said case was to direct the party no.1 not to terminate his service.

It is found from the record that if in 2005, the age of the workman was 33 years, when the case ULPA complaint no. 311/2005 was filed, in 1990, he was already 18 years old and not 15 to 16 years as claimed by party no.1. Moreover, the witness for party no.1 in his cross-examination has categorically admitted that the workman was engaged in 1990 at first. Hence, the submissions made by the learned advocate for the party no.1 in that regard have no force.

14. On perusal of the evidence adduced by the parties, both oral and documentary and taking into consideration the submissions made by the learned advocates for the parties, it is found that the workman was never appointed by party No.1 against any permanent post, but he was engaged to sweep and clean the office premises on daily wages basis in the year 1990. The workman has claimed that he had completed 240 days of work in every year before his oral termination from service by party No.1 in February, 2006. The claim of the workman of completing 240 days of work in every year has been denied by the party No.1.

It is well settled that service for 240 days in a period of 12 calendars months is equal not only to service for a year, but is to be deemed continuous service even if interrupted. Therefore, though S.25-F speaks of continuous service for not less than one year under the employer, both conditions are fulfilled, if the workman has actually worked for 240 days during a period of 12 calendar months.

It is also well settled that before a workman can complain of retrenchment being not in consonance with Section 25-F of the Act, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service.

In the present case, in order to prove that he worked continuously from 1990 to February, 2006 and completed more than 240 days in every year, the workman has examined himself as a witness and has filed his evidence on affidavit. The workman has also produced the documents, Exts. W-I to W-V.

It is to be mentioned here that though it is the case of the party No.1 that the workman was engaged on contact basis and the contract amount was paid to him on voucher as per the agreement, not a single document including the vouchers in question has been produced by the party No.1. The witness for the party No.1 in his cross-examination has stated that the workman was engaged by the management as a sweeper and he was engaged in the year 1990 for the first time.

It will not be out of place to mention here that though party no.1 has mentioned in the written statement that the workman was engaged on contract basis, it has not mentioned as to for how many days, the workman was engaged during the 12 calendar months preceding the alleged date of termination or the total days of his engagement. No document has also been filed by party No.1 in regard to the engagement of the workman.

In his evidence on affidavit, the workman has stated that he completed 240 days of work in every year. The said assertion of the workman has not at all been challenged in his cross- examination. Even no suggestion was given to him of his not completing of 240 days of work in the preceding year of the date of his termination.

Besides his own evidence, the workman has filed the documents, Exts. W-I to W-III, in support of his claim. Ext. W-I is the certificate granted by the Assistant Manager (P&A) of party No.1 on 27.03.2001. In Ext. W-I, it has been mentioned that the workman was working as a sweeper. Ext. W-II is a chart prepared by Party No.1 on 30.08.2005 in regard to the works to be performed by the workman. In Ext.-II, it was also been mentioned that the weekly of the workman was changed from Sunday to Monday. Ext.W-III was a written direction to the workman to go to the house of the R.M. on 13.10.2005. The above documents show that the workman was working continuously with party No.1 prior to his termination.

It is found from the evidence on record that the workman has been able to show that he had worked for 240 days in the preceding 12 calendar months of the date of the termination, i.e. before February, 2006. It is also admitted that before termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with. So, the termination of the services of the workman is held to be illegal.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

As per the submission of the learned advocate for the workman, the workman is entitled for reinstatement in service with continuity and full back wages.

On the other hand, the learned advocate for the party no.1 has submitted that the workman is not entitled for reinstatement or for any other relief.

16. At this juncture, I think it proper to mention about the recent judgment of the Hon'ble Apex Court reported in (2013) 5 SCC-136 (Assistant Engineer, Rajasthan Development Corporation Vs. Gitam Singh) in respect of grant of relief in cases of such nature. The Hon'ble Apex Court in the said decision have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty.)

The Hon'ble Apex Court have been pleased to hold that:-

> "In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was

illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute."

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1990. It is also found that he continued as such till February, 2006, when he was terminated from services by party No.1. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 1,00,000 (Rupees One lac only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Bharat Earth Movers Limited, Nagpur, in terminating the services of Shri Roopchand from February, 2006 is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 1,00,000/- (Rupees one lac only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 1,00,000/- to the workman, Shri Roopchand within 30 days of the publication of the award in the official gazette, failing which, the amount will carry interest at the rate of 08% per annum from the due date of such payment till the date of actual payment of the said amount.

J. P. CHAND, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली के आयुक्त नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 165/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-42012/40/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2743 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 165/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, Muncipal Corporation of Delhi and their workmen, which was received by the Central Government on 10.10.2014.

[No. L-42012/40/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No. 165/2012

The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi - 110006 ...Management

AWARD

Shri Ramesh Chand, was initially engaged as daily wager Mali by Municipal Corporation of Delhi (in short the Corporation). He was later on regularized as Mali with effect from 01.04.1978. He raised a demand for grant of pay in pay scale meant for the post of Choudhary, from the date of his appointment. His claim was rejected by the Corporation on the count that neither he was having requisite qualification nor passed the trade test for promotion as Choudhary. He approached the Nagar Nigam Karamchari Sangh (in short the union) for redressal of his grievances. The union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/40/2012-IR(DU), New Delhi dated 09.11.2012, with following terms:

"Whether action of the management of Municipal Corporation of Delhi (MCD) in denying the new

pay scale of 'Chaudhary' to the workman Shri Ramesh Chand, S/o Late Shri Shankar Singh, Mali, with effect from the date of appointment i.e. 01.01.1987 till date of retirement, i.e. 31.07.2007 is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Shri Ramesh Chand opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Ramesh Chand by registered post on 03.12.2012, calling upon him to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to his by registered post on 02.01.2013 calling upon his to file claim statement before the Tribunal on 29.01.2013. Notice was again transmitted to the claimant by registered post on 31.01.2013 asking him to file his claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question, referred for adjudication, was on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that no notice of demand was served on it prior to raising of dispute, hence it has not acquired status of an industrial dispute. The Corporation further pleads that for want of espousal, dispute has not acquired character of an industrial dispute. It has also been claimed that the dispute has been raised at a belated stage, since the claimant superannuated on 31.07.2007 and no dispute was raised during his tenure of service. Claimant is not entitled to get new pay scale of Choudhary with effect from 01.04.1978, the date when he was initially engaged as Mali. His claim is not maintainable. It is liable to be dismissed being devoid of merits, pleads the Corporation. There is a prescribed procedure for promotion to the post of Chaudhary from the post of Mali, i.e. there must be a sanctioned/vacant post of Chaudhary, the incumbent possesses requisite qualification and have passed trade test conducted by the Corporation. The claimant neither possessed the requisite qualification nor had ever appeared in any trade test. Shri Ramesh Chand never performed duties of Chaudhary. It has been projected that the claim is liable to be dismissed.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

7. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Industrial Disputes Act, 1947 (in the short the Act) is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

8. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. (1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become

an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd. (1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that " ... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

9. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd.(1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd. (1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex Court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

10. In New Delhi Tailor Mazdoor Union (1979(39) FL T 195), High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

11. The High Court of Madras in Management of Needle Industries (1986(1) LLJ 405) has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in Section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No, doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. (1984 (2) LLJ 259).

12. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal(supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

13. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

14. The Corporation for further argued that the dispute has not acquired status of an industrial dispute for want of espousal by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section (k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus:

> "2(k) "Industrial Dispute" means any dispute or difference between employers and employers, or

between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with—(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

16. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act. The Corporation does not dispute status of the claimant, being a workman within the meaning of Section 2(s) of the Act.

17. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of Section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment" terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

> "We also agree with the expression "any person" is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

18. In Kyas Construction Company (Pvt.) Ltd. (1958 (2) LLJ 660), the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist (1961 (II) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of eo workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members

of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

19. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (11) LLJ 256], the Apex Court referred the precedent in Dimakuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non-employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

20. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

21. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

22. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon Inida Limited [1974 (11) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (11) LLJ 256].

23. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is

evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

24. The Corporation agitates that a stale claim has been referred for adjudication. Though pay for the post of Choudhary has been claimed since the date of appointment of the claimant, yet the dispute was raised in the year 2012. The Corporation asserts that the dispute was not raised within a reasonable time. The Corporation wants this Tribunal to discard the claim of Shri Ramesh Chand, projecting it to be a belated one. Section 10(1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of Section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that very stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959(2) LLJ 26], Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal. Even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970(2) LLJ 256] Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975(2) LLJ 326]. In Gurmail Singh [2000(1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of the wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000(2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. From the above decision, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

25. It would be considered as to whether a stale claim has been referred for adjudication by the appropriate Government. As projected above, the claimant joined on 01.04.1978 and superannuated on 31.07.2007. He approached the Conciliation Officer in the year 2012. Consequently, it is emerging over the record that for more than 24 years the claimant was sleeping and suddenly he came out of slumbers and raised an industrial dispute. In these circumstances spell of 24 years, without any action on the part of the claimant, makes his claim stale. I find that the claimant was not justified to agitate his dispute after such a long spell of time. He indulged in leisure litigation, when he raised a dispute before the Conciliation Officer. Delay in raising the dispute certainly creates hindrance against the claimant, for grant of any relief to him.

26. For claim of new pay scale of Choudhary, it was incumbent upon the claimant to establish that he had performed duties of Choudhary. As projected by the Corporation in the written statement, Shri Ramesh Chand never performed duties of Choudhary and no office order was ever issued by the Corporation assigning him duties of Choudhary. In view of these facts, Shri Ramesh Chand is not entitled to raise a claim for new pay scale of Choudhary. Resultantly, it is concluded that action of the Corporation in denying the new pay scale of Choudhary to the claimant is found to be justified. Shri Ramesh Chand is not entitled to any relief on factual proposition too.

27. The foregoing reasons make me to conclude that Shri Ramesh Chand is not entitled to new pay scale of Choudhary. Action of the Corporation in denying new pay scale of Choudhary to Shri Ramesh Chand is found to be justified. No relief can be granted in favour of Shri Ramesh Chand. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 28.10.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारती एयरटेल सर्विसेज लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 134/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-40011/07/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2744 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 134/2012) of the Central Government Industrial Tribunal-

cum-Labour Court No. 1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Bharti Airtel Services Limited and Others and their workman, which was received by the Central Government on 10.10.2014.

[No. L-40011/07/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

ID NO. 134/2012

Shri Baljinder Singh,
S/o Shri Kharak Singh,
Senior Technician,
C/o All India General Mazdoor Trade Union,
70, Bal Mukund Khand Giri, Kalkaji,
New Delhi-110 010 ...Workman/Claimant

Versus

(1) M/s. Bharti Airtel Services Limited,
224, Okhla Industrial Estate, Phase III,
New Delhi-110 020

Also at

Plot No.16, Udyog Vihar,
Phase IV, Gurgaon,
Haryana-122002 ...Management No. 1

(2) M/s. Alcatel-Lucent Network
Management Services Ltd.,
15th Floor, Tower C,
DLF Cyber Green DLF City,
Phase III, Gurgaon,
Haryana-122002 ...Management No. 2

AWARD

A Senior Technician joined services with M/s. Bharti Airtel Services Ltd.(hereinafter referred to as management No.1) on 01.02.2007. He served management No.1 till 31.07.2009, the date when he tendered his resignation. His resignation was accepted by management No.1 on that very day and wages for the month of July 2009 as well as some amount towards full and final settlement was given to the 'Senior Technician. Thereafter, he joined services with M/s. Alcatel Lucent Network Management Services Pvt. Ltd. (in short the management No.2) on 01.08.2009. However, he raised a dispute before the Conciliation Officer claiming that his services were terminated by management No.1 in an illegal manner. Since his claim was contested, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No. L-40011/07/2012-IR(DU) New Delhi dated 18.10.2012 with following terms:

> "Whether the action of the management of Bharti Airtel Services Ltd. in terminating services of the workman, Shri Baljinder Singh, S/o Shri Kharak Singh, Ex-Senior Technician with effect from 01.08.2009 is legal and justified. If not, what relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Senior Technician, namely, Shri Baljinder Singh opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Baljinder Singh by registered post on 07.11.2012, calling upon him to file claim statement before the Tribunal on or before 03.12.2012. This notice was sent to him through All India General Mazdoor Trade Union, 170, Bal Mukund Khand Giri, Kalkaji, New Delhi, the address provided by the appropriate Government in order of reference. Neither the postal article was received back nor was it observed by the Tribunal that postal services remained affected from 07.11.2012 till 03.12.2012. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 04.12.2012 calling upon him to file claim statement before the Tribunal on 31.12.2012. Another notice was transmitted to the claimant by registered post on 31.12.2012 asking him to file his claim statement on or before 28.01.2013. Lastly, notice dated 30.01.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 25.02.2013. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Order of reference projects a question as to whether action of M/s. Bharti Airtel Services Ltd. in terminating services of Shri Baljinder Singh with effect from 01.08.2009 is legal and justified? Onus is there on management No. 1 to project that its action of terminating services of Shri Baljinder Singh was legal and justified. Consequently, management No. 1 was called upon to file its response to the reference order. In pursuance of the directions so issued, management No.1 filed its response to the reference order.

6. When response, so filed, is perused, it emerged that Shri Baljinder Singh joined services with management No. 1 on 01.02.2007 as Lead. His basic pay was Rs. 5767.00, besides house rent allowance of Rs. 4783.00 and conveyance allowance of Rs. 3000.00 per month. His wages were paid by way of transmission to his bank account No. 629401523110. Shri Baljinder Singh served management No.1 till July 2009. He tendered his resignation, which was accepted by management No. 1 on 31.07.2009. His wages amounting to Rs. 18917.00 were paid by way of transmission to his aforesaid bank account. Besides wages, a sum of Rs. 9024.25 was also paid to the claimant towards leave encashment. After getting his dues, claimant left services of management No. 1. He joined management No. 2 on 01.08.2009. His basic salary, which he is getting from management No.2, is Rs. 6547.00, besides house rent allowance of Rs. 4783.00, conveyance allowance of Rs. 800.00, and special allowance of Rs.4373.00. Thus, he gets a sum of Rs. 16503.00 from management No.2, which is higher than the wages which he was getting from management No.1. It is evident that Shri Baljinder Singh resigned the job of management No.1 in search of greener pastures. It is apparent that management No.1 has not taken any steps to terminate services of Shri Baljinder Singh.

7. As unfolded by management No.2, its name has been changed to M/s. Telesonic Network Ltd. with effect from 25.02.2013. Certificate issued by Registrar of Companies has been placed before the Tribunal in that regard. Consequently, it is evident that the management No. 2 took required steps to change its name, as referred above.

8. Nothing has been brought over the record by Shri Baljinder Singh to establish that his services were terminated by management No.1. On the other hand, management No.1 could demonstrate that Shri Baljinder Singh resigned the job for good. He joined services with management No. 2, where he was offered better emoluments. Consequently, it is concluded that management No. 1 had not taken any action in terminating services of Shri Baljinder Singh. It was the employee who tendered his resignation and marched away. Under these circumstances, neither any illegality nor unjustifiability can be noted on the part of management No. 1. Shri Baljinder Singh is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 25.03.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली के आयुक्त, नगर निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 202/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-42011/68/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2745.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 202/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 10.10.2014.

[No. L-42011/68/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 202/2012

The President,
Nagar Nigam Karamchari Sangh,
Delhi Pardesh, P-2/624,
Sultanpuri, Delhi-110045 ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi-110006 ...Management

AWARD

A Chowkidar employed at MC Primary School, Nawada II, Delhi by Municipal Corporation of Delhi (in short the Corporation) claimed payment of overtime allowance, since he was made to work beyond normal duty hours. His claim was not conceded to by the Corporation. He approached the Nagar Nigam Karamchari Sangh (Delhi) (in short the union) for redressal of his grievances. The union served notice on the Corporation seeking overtime allowance for duties performed in excess of normal working hours, wages for weekly holidays, gazetted holidays and casual leaves, which notice was not responded to. A dispute was raised

before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42011/68/2010-IR(DU) dated 04.04.2001, with following terms :

> "Whether action of the management of Municipal Corporation of Delhi (MCD) in denying overtime wages to the workman, Shri Baljeet Singh, S/o Late Shri Hari Singh, Chowkidar for performing 10 (ten) hours duty per day since the regularization of the workman Shri Baljeet Singh with effect from 01.04.1984 is justified or not? If not, what relief the workman is entitled to and form which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Chowkidar, namely, Shri Baljeet Singh opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Baljeet Singh by registered post on 27.12.2012, calling upon him to file claim statement before the Tribunal on or before 17.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 22.01.2013 calling upon him to file claim statement before the Tribunal on 11.02.2013. Notices were transmitted to the claimant by registered post on 12.02.2013 and 12.03.2013 asking him to file his claim statement on or before 08.03.2013 and 09.04.2013 respectively. Lastly, notice dated 10.04.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 24.05.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation filed its response, pleading therein that the claim was not properly espoused by the union, hence liable to be rejected. It further asserted that the dispute has been raised at a belated stage, hence it became stale. The Appropriate Government cannot refer such a dispute for adjudication, as it has become stale. The dispute is liable to be rejected on this count also, claims the Corporation.

6. The Corporation projects that claimant was getting overtime allowance @ Rs.625.00 upto a maximum of 50 hours in a month in accordance with circular dated 15.03.1997. For work performed on Sundays and holidays, the Chowkidars gets compensatory leave in lieu thereof, hence not entitled to overtime allowance. Chowkidars are entitled to 15 days casual leave, 3 national holidays and 6 other holidays of their choice in every calendar year. Their normal duty hours are 10 hours per day and previously Chowkidars were entitled to 24 hours rest (one day) in fortnight. Now, a Chowkidar is getting overtime allowance for 100 hours per month in accordance with circular dated 09.05.2011. Details of overtime allowance granted to the claimant from June,88 to March, 2013 are annexed as Annexure C with the response. In view of these facts, claimant is not entitled to any relief, claims the corporation.

7. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Abhinav Kumar, authorized representative, assisted by Shri Jagdish Chandra, U.D.C. raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

8. At the outset, it has been argued that the dispute has not acquired status of an industrial dispute since it has not been validly espoused by the union. For an answer, definition of the term industrial dispute is to be construed. For sake of convenience, definition of the term "industrial dispute", as defined by Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act).

> "(k) 'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

9. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject-matter of the dispute, which should be connected with –(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

10. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act. Here in the case, the Corporation does not dispute that the claimant is workman within the meaning of clause (s) of Section 2 of the Act.

11. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of Section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

12. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660] the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute'' is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his

union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Drona Kuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

15. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of Section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) LLJ 256].

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

18. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the

workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

19. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd. [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd.(1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that "... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

20. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal [1978(1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex Court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

21. In New Delhi Tailor Mazdoor Union [1979(39) FLT 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

22. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in Section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists (supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984 (2) LLJ 259].

23. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral

demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

24. Since the claimant had not come forward to project that demand notice was served on the corporation, under these circumstances, stand taken by the corporation is to be believed. Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

25. Turning to facts presented by the Corporation, it emerges that the Corporation takes 10 hours duty from Chowkidars. Keeping in view the nature of duties performed, the Corporation was paying intermittent allowance to Chowkidars for performing more than 10 hours duty. Allowance was paid @ Rs.130.00 per month for performance of duty upto 12 hours, Rs.180.00 per month for duties performed for more than 12 hours but upto 16 hours and Rs.190.00 per month for performing duties than 16 hours a day. Workers union agitated the issue and demanded overtime allowance in lieu of intermittent allowance. On the basis of the resolution, the Corporation, vide its decision dated 15.03.1997 decided to pay overtime allowance to the maximum limit of 50 hours. The said allowance was paid @Rs.625.00 per month. Workers union further demanded enhancement of maxima limit of overtime allowance and in consideration of the said demand, the Corporation started paying overtime allowance with a cap of 100 hours a month. Now, the Corporation is paying overtime allowance to Chowkidars at Rs.1250.00, in pursuance of Office Order dated 09.05.2011.

26. Annexure C, when scanned, highlights that from January 98 till March 2011, overtime allowance was paid to the claimant @ Rs.625.00 per month. From April 2011 till March 2013, overtime allowance has been paid to the claimant @ 1250.00 per month. Therefore, it is emerging over the record that overtime allowance is being paid to the claimant in accordance with the circulars, issued by the Corporation from time to time.

27. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of Section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. (1959 (2) LLJ 26), the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company (1970 (2) LLJ 256) the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. (1975 (2) LLJ 326). In Gurmail Singh (2000 (1) LLJ 1080) Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh (2000 (2) LLJ 1653), the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

28. Claimant raised the dispute in respect of overtime allowance paid to him with effect from 01.04.1994. Thus, it is emerging over the record that the claimant had raised the dispute after a long gap of 28 years. No explanation is offered for this inordinate delay. It appears that there was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

29. In view of the above reasons, it is evident that the action of the Corporation in paying overtime allowance to the claimant @ Rs.625.00 per month till March 2011 and thereafter Rs.1250.00 till date is in accordance with the circulars issued from time to time. Claimant is not entitled to overtime allowance more than the amount referred above. Resultantly, action of the Corporation is found to be justified. No relief is available to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 20.08.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 10 अक्तूबर, 2014

का.आ. 2746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अशोक होटल, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 130/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 10th October, 2014

S.O. 2746.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 130/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Ashok Hotel, New Delhi and their workman, which was received by the Central Government on 10.10.2014.

[No. L-42025/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 130/2013

Shri Babu Rao
S/o Sh.Gaindu Rao,
Through President,
Ashok Hotel Mazdoor Janta Union,
C-48-49, Ashok Hotel Staff Qtr.,
50-B, Chanakyapuri,
New Delhi - 110021 ...Workman

Versus

The Management of
Ashok Hotel,
Through its General Manager,
New Delhi ...Management

AWARD

Shri Bapu Rao joined services of Ashok Hotel (in short the Hotel) in 1996 as a houseman/sweeper in the main kitchen department for carrying out house keeping jobs. His services were abruptly dispensed with on 01.12.2008 His case for regularization in services of the Hotel was answered in his favour, by the Industrial Tribunal constituted by the Govt of NCT Delhi, vide award dated 05.10.2005. The Hotel challenged the award in High Court of Delhi through writ petition No.14828 of 2006, which was also decided in favour of the claimant. However, during pendancy of the matter before the High Court, his services were dispensed with by the Hotel. An industrial dispute is raised by the claimant before this Tribunal on 03.10.2013, using right available to him under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under sub-section (1) of section 10 of the Act.

2. Arguments on maintainability of the dispute were advanced by Shri S.S. Upadhyay, authorized representative of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

3. As record projects, dispute under reference is raised by the claimant, namely, Shri Bapu Rao under sub-section (2) of section 2A of the Act. The term "industrial dispute" has been defined by sub-section (k) of section 2 of the Act to mean "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person ". The definition of "indistrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with (i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

4. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the management does not

dispute that the claimant is workman within the meaning of clause(s) of Section 2 of the Act.

5. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

6. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendancy of an industrial dispute or he has been dismissed or discharged during such pendancy, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his Co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganized. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

7. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension - of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

8. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service, it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter in to the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the appropriate Government. On consideration of the report, so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, vide Amendment Act No. 24 of 2010, inserted sub-section (2) and (3) in section 2A and re-numbered original section as sub section (1) in order to enable the workman to approach an industrial adjudicator for adjudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

> "(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may make an application direct to Labour Court or industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
>
> (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

9. Provisions of sub-section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the 'Workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation officer, he may approach the Industrial Adjudicator for adjudicate of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

10. Bare perusal of sub-section (3) of section 2A makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

11. As emerged out of the claim statement, services of the claimant was terminated on 01.12.2008. Claimant projects that the Conciliation Officer entered into conciliation proceedings and forwarded his failure report to the appropriate Government on 23.09.2013. Out of facts presented by the claimant, it emerged over the record that his services were disengaged by the management on 01.12.2008. He raised an industrial dispute before this Tribunal on 3.10.2013, using provisions of sub section (2) of section 2-A of the Act. For approaching this Tribunal, under provisions of sub-section (2) of section 2A of the Act, limitation of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service of an employee has been imposed by the legislature. Thus, it is apparent that the claimant could have approached this Tribunal under sub-section (2) of section 2A of the Act till 30.11.2011 only. As is evident, claim preferred is beyond the period of limitation. Under these circumstances, this Tribunal cannot invoke its jurisdiction for adjudication of the dispute.

12. Since the dispute has been raised beyond the period of limitation, the Tribunal cannot entertain it. Under these circumstances, the Tribunal is constrained to brush aside the claim statement, presented by the claimant. Accordingly, his claim is dismissed, being barred by time. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 03.10.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 14 अक्तूबर, 2014

का.आ. 2747.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टाटा इंस्टिट्यूट ऑफ फंडामेंटल रिसर्च के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/52 of 2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-42011/30/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 14th October, 2014

S.O. 2747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Ref. No. CGIT-2/52 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Tata Institute of Fundamental Research and their workmen, which was received by the Central Government on 10.10.2014.

[No. L-42011/30/2008-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

REFERENCE No. CGIT-2/52 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF TATA INSTITUTE OF FUNDAMENTAL RESEARCH

The Registrar
Tata Institute of Fundamental Research,
Homi Bhaba Road, Colaba,
Mumbai-400 005

AND

THEIR WORKMEN

Smt. Rashmi Telore
C-301, Everest Tower,
Opp. Old Lourdes School,
Santoshi Mata Road,
Rambaug, Kalyan (W),
Distt.Thane.

APPEARANCES :

FOR THE EMPLOYER : Mr.S.P. Salkar, Advocate

FOR THE WORKMAN : Mr. G. S. Kodiyal, Advocate

Mumbai, dated the 17th July, 2014

AWARD

The Government of India, Ministry of Labour& Employment by its Order No.L-42011 / 30 /2008-IR (DU), dated 11.07.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of the Registrar, Tata Institute of Fundamental Research, Mumbai by terminating the services of their workman Smt. RashmiTelorew.e.f. 31/08/2007 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman has filed her statement of claim at Ex-5.According to the second party, she was appointed as a Scientific Assistant-B. She had applied in response to the advertisement and was selected and was appointed initially for four years since 16/09/2003. One year was probation period. She completed her probation period satisfactorily. She also completed her three years period, worked for more than 240 days in each calendar year continuously and deemed to be permanent. She was performing her duties sincerely. For the sole purpose of harassing her, Head of Department insisted the workman to work in the second shift i.e. from 13:30 to 22:00 Hrs. The workman has two and half year old child and she was required to take care of the child and it was practically impossible for her to work for such odd hours as she was staying at Kalyan and requires atleast two hours to reach from Colaba to Kalyan. For some time she worked in the second shift. However by her letter dt. 19/07/2007 she informed the employer the reasons as to why she was unable to work in the second shift perpetually. Immediately thereafter on 26/07/2007 she received a termination order issued by Registrar of the first party w.e.f. 31/08/2007 without assigning any reason. The workman challenged the said notice in writ petition before Hon'ble High Court. The same was disposed of on 4/9/ 2007 with a liberty to file the present reference. The first party has terminated the services of the second party with some mala fide intention. Therefore the workman raised the industrial dispute before ALC (C). As conciliation failed on the report of ALC (C), the Central Labour Ministry has sent the reference to this Tribunal. The workman therefore prays that the notice/termination order dt. 26/7/2007 issued by the first party be declared illegal and bad in law and the same be quashed and set aside. She also prays that the first party be directed to reinstate her with full back wages, continuity of service and all other consequential benefits.

3. The first party, management resisted the statement of claim vide its written statement at Ex-9. According to the first party the reference is not maintainable as the first party is not an 'industry' as defined under Section 2 (j) of the I.D. Act. On the other hand it is a research institute doing the research work in Fundamental Science and therefore second party is not 'workman' as defined under Sec 2 (s) of the I.D. Act. It does not sell and product or services to the customer. The object of the first party is to sustain scientific excellence in the country.

4. It is further submitted that the second party was employed for fixed term contract for four years including one year probation and the same came to an end by efflux of time. It was specifically informed to the workman vide letter dated 24/08/2004 that the continuation of her appointment will be subject to a comprehensive review and performance appraisal after three years therefrom. She was also given idea about the shift duty which she had orally agreed. During the period of pregnancy and post-delivery the second party was given concession to work only in general shift and was never asked to work in second shift during the said period. Subsequently she was in a position to work in the second shift. However vide her letter dt. 18/7/2007 she intimated the first party that she will not be able to attend the second shift for various reasons mentioned in the letter. It was also not possible for the first party institute to make any alternate arrangement in place of her in the second shift. The colleagues of the second party and the CCF Chairperson assured her all help but she bluntly refused to do the shift duties. The comprehensive review and performance appraisal were also different from each other. In case of fixed term employment normally the comprehensive review is done one month prior to the end of the term and the annual performance appraisal is done annually.

The second party was non-co-operative to the shift duty despite the fact that her colleagues were ready to help her. In the comprehensive review it was observed that second party was not right candidate and hence her contract was not renewed. As term of contract of employment was about the expire, vide letter dt. 26/07/2007, the first party informed the second party that her appointment in the institute would come to an end on 31/08/2007 due to non-renewal of contract of employment. They denied all the allegations made in the statement of claim and submitted that the reference is devoid of merit and prayed that the same may be dismissed with cost.

5. The second party filed her rejoinder vide Ex-10. She denied the allegations in the written statement about her non-co-operation and reiterated the contents in the statement of claim.

6. Following are the issues for my determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Whether first party is an 'industry'?	No
2.	Whether reference is maintainable?	No
3.	Does first party prove that second party cannot be continued after efflux of time, she was appointed on contract basis for 4 years only?	Yes
4.	Is second party entitled for any relief	As per order below.
5.	What order?	As per final order.

REASONS

Issue No.1 and 2:-

7. In this respect it was submitted on behalf of the second party that the first party has four main departments; they are Scientific, Administration, Ancillary/Technical and Auxiliary. It was pointed out that scientist work in scientific department. The administration looks after the administrative part of functions including pay and allowances, preserve service record etc. The Ancillary and Technical department help in producing the instruments and furniture items as required by scientist for doing research work as per their specifications. The Auxiliary department looks after parks, gardens, security, canteen and also contributing for scientific research by creating congenial atmosphere to work. The first party is also a deemed university imparting education to its students thereby giving cultural service, technological training and personality development.

8. The ld. adv. for the second party submitted that the first party is an industry as it satisfies the triple test which is prescribed by the Apex Court in Bangalore Water Works V/s. A. Rajappa AIR 1978 SC 548 wherein Hon'ble Court prescribed triple test to determine the employer as an industry. They are (i) There is a systematic activity. (ii) Organised by co-operation between the employer and employee and (iii) Production of goods and services calculated to satisfy human wants / wishes as they are not spiritual or religious. These conditions are admitted by the MW-1 in his cross examination at Ex-48. Therefore according to the second party the first party is an 'industry'.

9. As against this it is submitted on behalf of the first party that it is an institute dealing with research in Fundamental Science and under the control of Government. Though their activities are systematic and organised with co-operation of the employees, they are not dealing with any production or selling any goods or services to satisfy the human needs as has been defined in the above referred case. In such circumstances the first party cannot be called an 'industry'. In support his argument, ld. adv. for the first party resorted to Apex Court ruling in Physical Research Laboratories V/s. K. G. Sharma1997 II LLJ 625 (SC). In that case the research work done by PRL is observed not marketable or it has no commercial value. In the circumstances, the Hon'ble Court in respect of the research institute of like nature in para 13 observed that;

> "It is not engaged in a commercial, industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the customer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are therefore of the opinion that PRL is not an 'industry' even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogues to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs as ordinarily understood."

10. The ld. adv. for the first party also referred Karnataka High Court ruling in B. Vijaya Kumari Pillai (SMT) V/s. Management of Indian Institute of Science 2012 II CLR 529 wherein after considering the fact that Indian Institute of Science was mainly dealing in research work. Therefore in the light of above referred Apex Court ruling, the Hon'ble Court held that the said Indian Institute of Science is not an industry. In this respect the Hon'ble Court in para 18 of the judgement observed that;

> "The activity carried on is not for the benefit of any particular individual or an institution but it is for the benefit of the society as a whole and its object is not to render services to the others. It is not engaged in an activity which can be called business, trade or manufacture since it is not engaged in any commercial or industrial activity and it does not fall under the category of either economic venture or commercial enterprise as its object to produce and distribute service is not to satisfy the needs of the consumer community. In that view of the matter I am of the considered view that the activity carried on by the institute cannot be held to fall within the definition of 'industry'. Accordingly point no.1 is answered by holding that Indian Institute of Science is not an industry as defined under Industrial Disputes Act, 1947."

11. The ld. adv. for the first party also cited Apex Court ruling in State of Gujarat V/s. Pratamsingh Narsingh Parmar 2001 I CLR 968 wherein Hon'ble Apex Court held that Forest Department is not an industry.

In this ruling the Hon'ble Court further observed that;

> "The burden is on the claimant to prove that an establishment is an 'industry'. It is difficult for the first party to prove that it is not an industry."

12. This finding of the Hon'ble Apex Court is based on the principle that negative fact cannot be proved. The ld. adv. for the first party in this respect submitted that the initial burden was on the second party to prove that the first party is an industry. The second party failed to discharge the burden. On the other hand he pointed out that in her cross examination at Ex-14 the second party has contended that she does not know whether the institute is doing any trade or business to satisfy the needs of the customer which are the essential ingredient to declare an institute as an industry. The ld. adv. pointed out that the first party is doing research work in nuclear science and mathematics and is engaged in performance of sovereign functions. It is not doing any trade or business to satisfy need of the customers. Therefore the first party is not an industry. Thus the second party cannot invoke the provisions of the Industrial Disputes Act and the jurisdiction of this Tribunal as well. Accordingly I decide this issue no.1 in the negative. Consequently I hold that the reference is not maintainable and decide this issue no. 2 also in the negative.

Issue no. 3 and 4:-

13. Though reference is not maintainable, as other issues are framed, it is necessary to discuss and decide the same on merit. Therefore I am discussing these issues nos. 3 & 4 and deciding the same on merit.

14. In this respect from the pleadings of the second party it is clear that she was appointed for a period of four years inclusive of probation for one year. The fact is also not disputed that her services were terminated after completion of the period of four years. According to the second party she should be continued in service even after completion of the period of four years as the post of Scientific Assistant is of permanent nature. According to the second party her service throughout four years was satisfactory and without any blame. No adverse remark was ever communicated to her. Therefore she claimed that she is entitled to continue in the service as a permanent employee of the first party.

15. In this respect according to the first party the second party workman was appointed for fixed period of four years. Therefore she is not entitled to be continued beyond the said period of four years. In support of his argument the ld. adv. for the first party resorted to the Apex Court ruling in Secretary State of Karnataka V/s. Uma Devi 2006 – II – CLR – 261 (SC) wherein the Hon'ble Court in para 34 of the judgement on the point observed that;

> "If it is a contractual appointment, the appointment comes to an end at the end of the contract."

16. The ld. av. for the first party also resorted to another Apex Court ruling in Kishore Chandra Samanth V/s. Divisional Manager, Orissa State CDC Ltd. Dhenkanal 2006 I CLR 29 wherein workman therein was appointed for a fixed term. After expiry of the term he was allowed to continue for further period and thereafter he was discontinued. Therefore the Labour Court directed to reinstate the workman to his former post. The High Court in writ petition observed that the workman was appointed for fixed period of time on the basis of payment at different rates. The contractual period of engagement ended on 3/5/1989 and there was no renewal thereafter. Since the engagement was for a fixed period, the High Court set aside the award of the Labour Court. When workman approached Hon'ble Supreme Court, the Hon'ble Court in this case on the point observed that;

> "In the instant case in all, the orders of engagement specific period have been mentioned. Therefore High Court's order does not suffer from any infirmity."

17. In the light of these two Apex Court rulings I come to the conclusion that as the second party workman was appointed for the period of four years, she cannot claim reinstatement or continuation of service after the expiry of the said fixed period. Accordingly I decide this issue no. 3 in the affirmative that first party has proved that the second party cannot be continued after efflux of time she was appointed for. As a result I come to the conclusion that the second party is not entitled to be reinstated in the service and is not entitled to the reliefs prayed for.

Accordingly I decide this issue no. 4 in the negative and proceed to pass the following order:

ORDER

The reference is dismissed with no order as to cost.

Date: 17.07.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 14 अक्तूबर, 2014

का.आ. 2748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नवल डॉकयार्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/11 of 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2014 को प्राप्त हुआ था।

[सं. एल-14011/15/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 14th October, 2014

S.O. 2748.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. Ref. No. CGIT-2/11 of 2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Naval Dockyard and their workmen, which was received by the Central Government on 10.10.2014.

[No. L-14011/15/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

REFERENCE No. CGIT-2/11 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF NAVAL DOCKYARD

The Admiral Superintendent
Naval Dockyard,
Shahid Bhagat Singh Road,
Lion Gate,
Mumbai-400 023.

AND

THEIR WORKMEN

The General Secretary
Indian Naval Employees Union,
12/14, Rajgir Chambers, R. No. 60, 7th Floor,
Shahid Bhagat Singh Road,
Opp. Old Custom House,
Mumbai -400 023.

APPEARANCES:

FOR THE EMPLOYER : No appearance

FOR THE WORKMEN : No appearance

Mumbai, dated the 25th September, 2014

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-14011/15/2010-IR (DU), dated 28.03.2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of Indian Naval Employees Union, Mumbai for reduction of experience from eight years to six years for the promotion from skilled category workmen to Highly Skilled Category Workmen of the Industrial Employees of Naval Dockyard, Mumbai is legal and justified? What relief the workmen are entitled to?"

2. After receipt of the reference from Ministry of Labour & Employment, notices were sent to both the parties. Second party Union appeared before this Tribunal on 5/9/2011 and filed their Statement of Claim (Ex-4) making out their case. Representative of management remained present on few dates but did not file their written statement. Therefore "no written statement by management" was passed on 05/10/2012. Thereafter matter was adjourned on several dates due to non-appearance of parties for filing documents/affidavit of WW-1 i.e. evidence of union. The notices issued to second party union returned unserved twice with postal endorsement "unclaimed". The second party union has neither approached this Tribunal nor filed affidavit in lieu of examination-in-chief to prove their case.Today, since both parties remained absent, 'no affidavit from workman' order was passed. In the circumstances the reference deserves to be rejected for want of prosecution. Thus I proceed to pass the following order:

ORDER

Reference stands rejected for want of prosecution.

Date: 25.9.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 14 अक्तूबर, 2014

का.आ. 2749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओमान एअर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 78 of

2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14-10-2014 को प्राप्त हुआ था।

[सं. एल-20013/2/2014-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th October, 2014

S.O. 2749.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s. Oman Air, and their workmen, received by the Central Government on 14-10-2014.

[No. L-20013/2/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 5th September, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 78/2012

(In the matter of the dispute for adjudication under clause 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010) between the Management of Oman Air and their workman)

BETWEEN :

Ms. Annie Thomas : 1st Party/Petitioner

AND

The Management : 2nd Party/Respondent
Oman Air,
Deshbandhu Plaza,
Ground Floor,
No. 47, Whites Road,
Royapettah,
Chennai-600014

Appearance:

For the 1st Party/ Petitioner : M/s. Balan Haridas, Advocates

For the 2nd Party/ Management : Sri T.V. Lakshmanan, Advocate

AWARD

This is an Industrial Dispute taken on file under 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

The averments in the Claim Statement filed by the petitioner in brief are these:

2. The petitioner was appointed as Customer Service Agent under the service of the Respondent by order dated 09.12.1998. The petitioner has been discharging her duties efficiently. One Siny Mary Verghese was appointed as Station Manager of the Respondent at Anna International Airport, Chennai. She had been harassing the petitioner and insisting the petitioner to do all her personal work. When the petitioner became ill it was not possible for her to do the personal work of the Station Manager. She started ill-treating the petitioner because of this. She had been trying to push the petitioner out and promote Syed as Duty Supervisor. In continuation of this the petitioner was placed under suspension on 08.07.2011 and a Charge Memo dated 06.07.2011 was issued to her. The allegations made in the Charge Memo related to the year 2010 and prior to that which had been closed for ever. The petitioner gave an explanation to the Charge Memo denying the charges leveled against her. She also lodged a complaint against the Station Manager in the Airport Police Station alleging harassment. The petitioner had also filed a Civil Suit before the District Munsiff, Alandur seeking injunction restraining the Respondent Management from interfering with the employment of the petitioner. As the matter was sub-judice the petitioner had represented through her counsel to adjourn the enquiry on the charges leveled against her. In spite of this, the enquiry was conducted and a report was submitted holding that the charges against the petitioner are proved. The findings of the Enquiry Officer is perverse and contrary to the evidence on record. On the basis of the enquiry report the petitioner was terminated from the service of the Respondent by order dated 29.02.2012. The termination is grossly illegal. The charges levelled against the petitioner are without any basis. The first allegation in the Charge Memo is that her probation was extended. This cannot be a misconduct as the petitioner's service had been confirmed and she had rendered more than 16 years of unblemished service. The petitioner who was appointed by the Respondent in December 1998 was only a Trainee in the year 1999. The second allegation that the petitioner failed to handle the passengers who have delayed or mishandled the baggage nor left any instruction for the same and caused operational difficulties and dislocation to the airlines is not correct. No memo or charge memo had been issued to the petitioner raising such allegation at the time. In any case, there cannot be a charge in the year 2011 regarding an incident allegedly reported in the year 1999. The third allegation that the petitioner allowed a deportee to leave the airport without obtaining signature in the Indemnity form and without collecting COD of Rs. 17,070/- also is false. No memo or charge memo had

been issued in this respect. In any case, there cannot be a charge regarding the alleged incident reported in the year 1999, in 2011. The fourth allegation in the charge memo that the petitioner failed to collect four tokens received through OCS and one carton was missing due to petitioner's negligence in 1999 also is false. There cannot be a charge in this respect also in the year 2011. The fifth allegation that the petitioner was transferred from Airport to Town Office to assist in the Sales because of unsatisfactory performance of duties in the Airport also is false. There was work only for 5 days in a week in the Airport and some of the employees were asked to work in the Town Office in assisting sales. It is not as punishment the petitioner was asked to work in the Town Office. The sixth allegation that on 18.10.2003 the petitioner behaved badly to a co-staff is not true. Though a memo was submitted to the petitioner making such an allegation no further action was taken regarding this. There is no substance in allegations six and seven of the Charge Memo. The eighth allegation against the petitioner is that she was given a memo on 11.06.2005 for having accepted a passenger for travel on expired visa. Due to work pressure sometimes mistakes do happen. The Respondent had not conducted any enquiry in this regard and had left the matter by not proceeding in any manner. The incident cannot be re-opened to the convenience of the Respondent. The ninth allegation against the petitioner is that a memo was given to her on 22.04.2007 for accepting the passenger holding a similar name. The charges is very vague. The memo was not proceeded with in any manner. There cannot be a charge now regarding the incident. The tenth allegation in the charge memo that she was issued memo on 02.03.2009 for accepting a passenger without any proper documents also is denied. The memo supposed to have been given has not been proceeded in any manner. The eleventh allegation is that on 23.03.2009 the petitioner was given warning notice for misdemeanor while dealing with her superiors, co-workers, passengers, etc. The petitioner had submitted explanation to her superiors and they were satisfied. The petitioner had been cooperating with her colleagues. The allegation is without any basis. Allegations twelve and thirteen in the charge memo are without any substance. The petitioner used to report for work half an hour earlier every day. Syed who had seen the petitioner taking pre-flight sheets on the previous day should have kept the papers for the petitioner to fill-up. The charge memo was issued at the instance of the Station Manager. The Respondent Management had conducted a farce of an enquiry. The punishment is grossly illegal. The petitioner had not committed any misconduct. An award may be passed directing the Respondent to reinstate the petitioner in service with full back wages and other attendant benefits.

3. The Respondent has filed Counter Statement contending as follows:

> The Respondent disputes the maintainability of the petition. The petitioner has not stated anything about her role in the office of the Respondent. She has not stated her entitlement to approach the Tribunal. The enquiry against the petitioner was conducted in accordance with law. It is incorrect to state that while the petitioner was working with the Respondent she had been performing sincerely and efficiently. She was not carrying out her duties properly. She was also interfering with the work of the colleagues. She had been quarrelsome in nature. However, the Respondent had been taking a lenient view on the petitioner. She was let off with warning on several occasions. The actions of the petitioner in the charge would show that her conduct was marring the atmosphere of the office and threatening the policy of the Respondent. Her termination is fully justifiable. The earlier disciplinary actions against the petitioner culminated in warning only to avert any fall in her moral. The instances contained in charges 12 and 13 of the charge memo reveal the misbehavior of the petitioner. Throughout her service the petitioner had shown insubordination and incompetence apart from lack of integrity. The petitioner is not entitled to any relief.

4. The evidence in the case consists of oral evidence of WW1 and MWs 1 to 3 and documents marked as Ext.W1 to Ext.W14 and Ext.M1 to Ext.15.

5. **The points for consideration are** :

(i) Whether the action of the Respondent in removing the petitioner from service is justified.

(ii) What if any is the relief to which the petitioner is entitled?

6. The petitioner is said to have entered the service of the Respondent as Customer Service Agent in December 1998. By order dated 29.02.2012, the petitioner was terminated from service on the basis of an enquiry report. Various charges were leveled against the petitioner in the enquiry.

7. The petitioner had contended in the Claim Statement that the enquiry had not been conducted in a fair and proper manner. In fact the petitioner had filed a suit before the Civil Court seeking an order of injunction restraining the Management from interfering with her employment. She had given representation before the Enquiry Officer seeking to postpone the enquiry during the disposal of the suit. However, the Enquiry Officer had proceeded with the enquiry. The petitioner had not participated in the enquiry. While considering the issue whether the enquiry was conducted in a fair and proper

manner, this Tribunal had found that the enquiry having been conducted in the absence of the petitioner, she had no opportunity to defend her case and opportunity had been given to her to cross-examine all the witnesses examined by the Management before the Enquiry Officer. It is accordingly, the Management witnesses were cross-examined on behalf of the petitioner on the basis of the evidence given by them before the Enquiry Officer.

8. During argument the counsel for the Respondent has raised a contention that the petitioner has not established that she is a workman coming under Section-2(s) of the ID Act. In fact in the Counter Statement the Respondent has not specifically raised a contention that the petitioner is not a workman as defined under the ID Act. However, it is stated in the Counter Statement that the petitioner has not stated anything about her entitlement to approach the Tribunal on her competence as well as on jurisdiction.

9. It has been argued on behalf of the counsel for the petitioner that it is for the Management to prove that the petitioner is not a workman as defined under the ID Act. The counsel has also referred to the decision of the Madras High Court in MANAGEMENT OF HINDUSTAN MOTORS LTD. Vs. LAKSHMAIAH AND ANOTHER REPORTED IN 2002 2 LLN 725 where it is held that the burden is on the Management to prove that the petitioner is not a workman. However, this argument of the counsel for the petitioner is not in consonance with the dictum laid down by the Apex Court. In this respect, the counsel for the Respondent has referred to the decision of the Apex Court in MUKESH TRIPATHI VS. SENIOR DIVISIONAL MANAGER, LIC AND OTHERS reported in 2004 8 SCC 387 and also SONEPAT COOPERATIVE SUGAR MILLS LTD. VS. AJIT SINGH reported in 2005 3 SCC 232 where it was held that it is for the worker to establish that he is a workman under the ID Act. So certainly it is for the petitioner to establish that she is a workman and she is entitled to approach this Tribunal claiming relief.

10. As already pointed out the Respondent has not raised any specific contention in the Counter Statement that the petitioner is not a workman. Only at the stage of the argument this aspect is specifically put forth. In any case, on going through the nature of contention of the petitioner and the evidence available on either side it could be seen that the position of the petitioner with the Respondent is that of "Workman". Even in the Claim Statement the petitioner has stated that she was appointed as Customer Service Agent. She was working under the Station Manager of the Respondent at the Airport. It is the Station manager who had issued memo to the petitioner. There is nothing to show that the petitioner was working in a supervisory capacity or that there were any subordinates under her to be supervised by her. Lately, she had been transferred to the Town Office of the Respondent also where she had been doing work which was clerical in nature only. So the contention on behalf of the Respondent that the petitioner has no right to approach this Tribunal for relief as a workman is only to be rejected.

11. The Charge Memo issued to the petitioner is dated 06.07.2011. Surprisingly, 13 charges regarding the incidents that had taken place within a range of 10 years are referred to in the Charge Memo. The charges 12 and 13 which are the last two charges themselves have occurred almost a year before the charge memo was served on the petitioner.

12. The incident referred to as the first charge in the charge memo (Ext.W8) is that the probation of the petitioner in the post of Customer Service Agent in the service of the Respondent had to be extended as the manner of performance of the duties of the petitioner was not satisfactory and she had failed and neglected to improve her performance. The petitioner has stated that the charge is without any basis. She has further stated that she was only a Trainee during the period. In fact the charge does not mention on which dates the probation of the petitioner had to be extended. As seen from Exts.M12 and Ext.M13 in the enquiry proceedings (Page 99 and 100 of the Respondent's typeset respectively) the probation of the petitioner was extended for three months w.e.f. 08.03.1999 and for another three months more from 08.06.1999. What is stated in both extension order is that the performance during the period has been unsatisfactory.

13. By the term charge what one understands is that there was some misconduct on the part of the concerned employee. Failure to perform satisfactorily and that also during the probation period could not be treated as misconduct at all. It was for the very reason of failure to perform properly the probation period was extended. As could be seen, the probation of the petitioner was later declared and she has become a regular employee of the Respondent. One can only wonder how the extension of probation becomes a subject of charge and that also after a decade after probation was declared.

14. The second incident that is referred to in the charge also had occurred in the year 1999. The allegation is that the Airport Officer had reported on 11.06.1999 that the petitioner has failed to handle passengers who have delayed or mishandled baggage and did not leave any instruction for the same to be dealt with by the other staff while she was on off-days causing operational difficulties and dislocation to the airline. Ext.M14 in the enquiry proceedings (Page-101 of Respondent's Typeset) is the document pertaining to this charge. Ext.M15 also refers to this. It is clear from Ext.M12 and Ext.M13 that at the time of this alleged incident the petitioner was still on

probation. So she could not be supposed to have been entirely responsible for all her deeds at the time. Even assuming that the petitioner is responsible for the same, the incident could not be treated as misconduct on the part of the petitioner. It is only a mistake or negligence on her part which caused some inconvenience to the Respondent. In any case how can this incident which had occurred during the probation period of the petitioner could be brought up as a charge of misconduct against her after a period of 10 years? The Respondent in its anxiety to see that the petitioner is turned out seems to have forgotten this basic aspect.

15. The third charge against the petitioner is that on 30.12.1999 the Airport Officer had reported that the petitioner allowed a deportee to leave the airport without obtaining his signature in the Indemnity form and without collecting the COD amount. The fourth charge is that on 11.09.1999 she has failed to collect four cartons received through OCS because of her delayed attendance and one carton was lost because of her negligence and she has failed to fill up the concerned forms properly. Ex.M15 in the enquiry proceedings (Page-102 of Respondent's Typeset). The incident referred to in the two charges are also in the year 1999. On 11.09.1999 the petitioner must have just completed her probation which was extended for a period of three months from 08.06.1999. The other incident is on 30.12.1999, in the same year no memo was issued to the petitioner at the time or the matter pursued. There is nothing other than Ext.M15 to prove the incident. One does not know what prompted the Respondent to take up these things which had occurred so many years ago and use them against the petitioner. It is totally unwarranted.

16. As Charge No. 5, it is stated that the petitioner was transferred from Airport to Town Office to assist in sales because of her unsatisfactory performance of duties in the Airport, but her performance did not improve in spite of the same showing her incompetence to continue in the service of the Airline.

17. Ext.M16 in the enquiry proceedings (Page-106 of Respondent's Typeset) is the order of transfer of the petitioner from Airport to the Town Office on 06.03.2000. The order merely states that she is transferred from Airport to Town Office to assist in sales with immediate effect. The case is that it was because of poor performance of the petitioner that she was transferred. However, there is nothing in Ext.M16 to show that the transfer was for this reason and it was by way of punishment. If the contentions in the Claim and in the Counter Statements are taken into account the petitioner had subsequently been working in the Airport. Some of the incidents mentioned in the charge have reference to the Airport. In any case, how can a transfer itself, even assuming it was on account of poor performance, could be a misconduct on the part of the petitioner?

18. The sixth charge against the petitioner is that on 18.10.2003 certain co-staff complained against her stating that she would leave her work for others and degraded and commanded other staff and made them to other jobs while they were on their duty. Under Charge no. 7 it is stated that on 25.11.2003 the petitioner was given a memo by the Deputy Station Manager based on the complaint of the staff. The alleged complaint made by the staff is marked as Ext.M17 (Page-107 in the Respondent's Typeset) in the enquiry proceedings. Ext.M18 (Page-110) is the memo issued to the petitioner on the basis of the above complaint stating that the petitioner has been advised regarding the incident to avoid hindrances among colleagues and if no change is noticed her service will be re-rostered to other areas. An enquiry does not seem to have been conducted on the alleged complaint by the staff. On the basis of the complaint the superior officer had talked to the petitioner and had advised her. The matter seems to have been closed by this. The closed matter is now being re-opened and included as a charge in the charge memo and the petitioner is asked to answer the same a second time. Even assuming that the petitioner had misbehaved as complained there was no reason to re-open the same. Ext.M19 in the enquiry proceedings is the memo given to the petitioner regarding this. Ext.M20 is the memo issued by the Station Manager stating that such discrepancies will not be tolerated in future and the same is to be treated as a warning. The matter was thus closed with the warning.

19. The eighth charge against the petitioner is that on 11.06.2005 a memo was given to the petitioner by the Airport Officer for having accepted the passenger for travel on an expired visa and she was warned of lack of concentration and lack of competence. The petitioner has not denied the charge in the claim statement. She has stated that this had occurred due to work pressure.

20. The ninth charge against the petitioner is that on 22.04.2007 she was given another memo for accepting a passenger holding a similar name which displayed her negligence and lack of competence. Ext.M20 in the enquiry proceedings in the memo (Page 112 of Respondent's Typeset) is the memo stating that the petition has wrongly accepted the passenger Krishnamurthy instead of Manokrishnamurthy. By the same memo the petitioner is warned. This incidents referred under Charges 8 & 9 are not misconduct but certain dereliction on the part of the petitioner in duty.

21. The tenth charge given is that on 02.03.2009 the petitioner had accepted a passenger with improper documents revealing her lack of competence and a memo was given to her in this respect. The petitioner has denied the allegation in her Claim Statement. She has further stated the memo which is supposed to have been given had not been proceeded in any manner and this means the allegation was wrong. She has stated that it cannot

be re-opened. Ext.M 21 in the enquiry proceedings is the document relied upon to prove this. This memo dated 02.03.2009 states that a passenger whose visa was cancelled was accepted by her. The memo also states that the error should not be repeated and in future any fine paid by the Company due to improper documents will be debited to the petitioner for recovery. It is stated in the memo that the petitioner is to sign it as an acknowledgement. It could not be made out from the copy if the petitioner has signed the same. What the petitioner has stated during her cross-examination is that she did not receive Ext.M 21. Even assuming that the incident had happened and the memo was served on the petitioner, the matter is seen closed by the memo advising the petitioner not to commit such errors in future in the case of which the amount that the company had to pay will be debited on her. So this also could not have been included as a charge for a second enquiry.

22. The eleventh charge against the petitioner is that she was misbehaving towards her superiors, co-workers and passengers. It is stated under charge 11 that on 23.03.2009 the petitioner was issued a disciplinary warning notice for her such behavior and also for challenging Mr. Mohammad Siyad. On the issuance of memo, she has allegedly asked him "*What will you do, you will report this behavior in my appraisal, I do not care, I challenge you that you or the Country Manager India with whom you are close cannot do anything, I will remain in this company for 10 more years or till I retire or till I die*". She is also supposed to have told him "*you are a coward that you did not have the guts to give me a memo directly and had sent it through Sheetal*". In her claim statement the petitioner has admitted that a memo as stated in the charge has been served on her. According to her, she has given her explanation to her superiors regarding this and they were satisfied also and no further action was initiated against her. Ext.M22 in the enquiry proceedings is the memo in question. The memo had sought explanation from the petitioner why disciplinary action should not be taken against her for the incidents referred to in the memo. Apart from Ext.M22 itself there is no other document on the side of the management to show that the petitioner had not given any explanation and this and disciplinary action has been taken against her. In fact Ext.M22 is not seen pursued further either because the explanation of the petitioner was accepted or because the management dropped the matter by issuance of the memo itself. In any case, there is nothing to show that the allegations made in the memo are true. The incident if any having been taken up and concluded, it should not have been raised again.

23. Charge Nos. 12 and 13 are the last two charges about which oral evidence has been given by the Management witnesses. Charge 12 states that on 25.09.2010 the petitioner was given a warning letter for displaying a poor attitude by throwing a pre-flight paper into the dust bin because it was prepared by another staff and when the Station Manager tried to explain the mistake the petitioner raised her voice without accepting it and also walked out of the briefing session without asking for permission. Charge No. 13 merely states that on 30.09.2010 the regional Manager had given a final warning letter to the petitioner for her irrational behavior during job functions at office. In the Claim Statement the petitioner has not specifically denied the charge that she had put the pre-flight sheet in the dust bin. What she has stated in the Claim Statement is that she usually reports for work half an hour earlier every day and she used to fill up the in and out details. She has further stated that Syed the one who had prepared the pre-flight paper had seen the petitioner taking the pre-flights sheets on the previous night and he should have kept the papers for the petitioner to fill up. She has further stated that the way in which Syed writes COF and the way she does it are different. According to her the Station Manager instigated Syed and created problems. It has been pointed out by the counsel for the Respondent that the petitioner has tried to justify her act by different versions at different stages. During her cross-examination what the petitioner has stated is that Syed (MW2) should have kept the paper for her to fill up. She has then stated that she had thrown the paper in the dust bin since it was not neat and there were a lot of mistakes. She again stated that if not for the mistakes and if not because it was not neat she would not have thrown it in the dust bin. What she has stated in Ext.W9, the explanation given by her to the Charge Memo is that the way in which she writes COF and Syed does it are different. There were a series of email communications regarding the incident between MW3, the Station Manager and the petitioner. Ex.M14 is the communication from the Station Manager to the petitioner stating that it is a warning letter issued to the petitioner "in connection with the attitude displayed on 22nd September wherein she had thrown the updated pre-flight paper prepared by Syed into the dust bin". It is seen from the same communication that there was a briefing regarding the incident and the petitioner had explained that the paper was incomplete and she had found it not useful enough to fill up further details. As per the letter the petitioner was not ready to accept her mistake though she was briefed. The letter asks for an explanation from the petitioner. By way of reply the petitioner has stated that already they have spoken twice regarding the matter and she has nothing more to explain. Then the Station Manager sent another mail stating that she did not clarify the point and she requires an explanation. In reply, the petitioner has stated that she has not disposed the paper in the dust bin with any bad intention but only due to the fact that it was incomplete and she wanted to have the report in a single handwriting as it is kept for the record. Then there is another

communication from the Acting Office Manager stating that the past records of the petitioner were not impressive. The letter is by way of a final warning to the petitioner for her "disrespectful and un-courteous behavior towards staff and job responsibilities". Though the letter of the manager does not state any incident specifically, the petitioner has sent a reply referring to the incident of throwing away paper. She has stated that she has taken a pre-flight sheet from the system and kept it ready for her use to complete in the next morning as she was the only staff to report for duty at an early time she was always preparing pre-flight sheets whenever she was on duty, that Syed had observed that she had kept the sheets ready for the next day and in spite of that he has taken them and made a few entries after she left. She has added that it was not with any bad intention she has disposed the paper in the dust bin but because it was incomplete and she herself wanted to do it as she used to do everyday. She has also stated that the details filled were in a zigzag manner and so she decided to dispose it and use a fresh one and fill it up in her own handwriting. She has requested to withdraw the final warning stating that she felt demoralized and depressed. She had stated in the letter that her explanation has clarified the matter. She has also stated that she will be glad to have a discussion as she believed the problem must be judged after hearing the story from both the disputed parties. In the reply the Manager has stated that the Management is taking the drastic step towards disciplinary action.

24. It is not in dispute that the paper was disposed into the dust bin by the petitioner. Only the attributing of mal-intention behind it is disputed by the petitioner. There is the evidence given by MW2 Syed who had prepared the pre-flight paper partly on the previous day. He has deposed in the enquiry proceedings that he had prepared the pre-flight chart with the available information and had kept it on table for further updation. However, when he reported for duty on the next day he saw the same lying in the dust bin. He had brought the matter to the notice of the Station Manager on the same day. During cross-examination, the witness has stated that the Shift-in-Charge will be preparing the pre-flight chart though others also will be doing it at times. He further stated that on 22.09.2010 he was supposed to prepare the chart. It has been brought out during cross-examination of MW2 and also MW3, the Station Manager that the chart was prepared by the petitioner and it was given to the Management and there was no disruption of flight on this day. The attempt seems to have been bring out that no undue incident had occurred on account of the petitioner disposing the chart prepared by MW2 and herself preparing it.

25. MW3, the Station Manager has stated in the enquiry proceedings that after the incident was brought to her notice, she had held a meeting with the staff. According to her she advised the petitioner that she could have prepared another pre-flight detail than throwing the one MW2 had prepared in the dust bin which according to her will demoralize him. The petitioner is said to have walked away without permission, without heeding to her advise. She again talked to the petitioner on 23rd and the petitioner again refused to accept the mistake and tried to justify her misdeed. It was thereafter she had sent the e-mail warning the petitioner about her insubordination.

26. The case advanced by the petitioner is that the Station Manager had become inimical towards her since she had been finding it difficult to do the personal work of the Manager after she became ill. She has also alleged that the Station Manager always wanted to promote MW2.

27. In fact the incident in question if considered by itself is trivial in nature. Such kind of incidents may sometimes occur in each and every office. The only fault the petitioner had allegedly done is that she had disposed the pre-flight sheet partly prepared by MW2 on the previous day in the dust bin and she had taken it upon her to prepare another by herself. MW3 herself did not find fault with the petitioner for preparing the pre-flight paper. As she has stated during the cross-examination the paper partly filled up by MW2 could have been retained by the petitioner even though she prepared another sheet. What she has sated is that the act of the petitioner would have demoralized MW2. MW2 himself has stated that even though usually the chart is prepared by the one who is in charge others also used to do it. The claim of the petitioner is that she being the one who used to reach the office first she was mostly preparing it. Merely because the petitioner has disposed the paper in the dust bin, any bad intention could not be attributed upon the petitioner. However, there is the fact that MW2 was the person in charge and it was his duty to prepare the chart. In that case, probably she could have discussed the matter with MW2 before she resorted to preparing it herself. Even though there was such a practice. The fault of the petitioner in the incident can be to this extent only.

28. The further allegation against the petitioner is that she refused to accept the advice given by MW3 and even walked away from the room of MW3 trying to justify herself. As could be seen from the e-mail communications, the petitioner has always been trying to explain that she had no mal-intention in her act of disposing the paper into the bin. This could not be taken as insubordination on her part. It was only a denial of the guilt attributed upon her by the manager. It was because the explanation given by the petitioner was not found satisfactory by the Management, disciplinary proceedings has been initiated against her. As could be seen the petitioner had to pay dearly for not accepting the advice allegedly given by MW3.

29. The drawbacks of the petitioner starting from the initial stage of her career, even during the probation period were dug up by the Management and incorporated in the charge memo issued to her. However, it is seen from the documents produced on the petitioner's side and the evidence of MW1 that the Management had given several letters of appreciations to the petitioner for the good work done by her. These are marked as Ext.W1 to Ext.W9. By Ext.W1 appreciation is given for the fact that the efforts of the petitioner for sales in the Chennai market had proved fruitful. This seems to have been not long after the petitioner was sent to the Town Office. The present allegation is that it was by way of punishment she was sent to the Town Office. I have already found that there is nothing to prove this case. She seems to have been working hard to boost the sales of the airways. Ext.W2 is the letter of appreciation in 2006 for her handling the situation caused due to a delayed flight. Ext.W3 is the letter appreciating her assistance to the VIP passengers who have travelled by the flight of the respondent Company. Ext.W4 is the letter of appreciation by a frequent traveler to the Manager regarding the excellent service provided by the staff especially the petitioner. Ext.W5 to Ext.W7 are also such letters of appreciation given at different stages in the career of the petitioner.

30. MW1 is the one who normally take care of the legal issues relating to the Company in Chennai. He has nothing to do with the incident of the petitioner throwing the paper into the dust bin. He has no personal knowledge of other allegations made against the petitioner also. This witness was examined to prove the documents of the Respondent. However, the evidence of this witness is important in the sense that the petitioner had worked alongwith him for six months in the Town Office. This witness has specifically stated that the Transfer Order of the petitioner will not show that the transfer was effected by way of punishment. More important, he has stated that he never had any problem with the petitioner when she was working with him. So it could not be that the petitioner was always quarrelling with the colleagues and creating problems.

31. Even assuming that the incident of throwing of the paper is considered as an offence is it a case where the concerned person is to be thrown out of service? The counsel for the Respondent has referred to the decision MP ELECTRICITY BOARD VS. JAGDISH CHANDRA SHARMA reported in 2005 3 SCC 401 in support of his argument that breach of discipline at work place entails severe punishment. In the above case the Apex Court has held that in the case of breach of discipline at work place by an employee it is not open to the Labour Court or industrial tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. It was further held that discipline at work place is essential for the prosperity of the organization as well as that of its employees. There could not be any dispute regarding the dictum laid down by the Apex Court. However when the facts are taken into account the case referred to by the counsel could not have any comparison to the facts of the present case. It was a case where the employee had hit his superior officer with a tension screw on his back and nose leaving him with a bleeding and broken nose in the presence of other employees. In the present case, the only insubordination said to have been committed by the petitioner is that she denied the guilt attributed on her when the Manager tried to make her realize her alleged guilt. It is not a case of insubordination, which should result in termination of the employee.

32. If the previous incidents referred to in the charge are brought out to show that the petitioner was not behaving properly and was having attitude problems in the office in her behavior towards her colleagues and superiors, even this should not have entered in termination of the petitioner. I find that the termination of the petitioner by the Respondent is not justified. She is entitled to be reinstated in service.

33. In view of my discussion above, the Respondent is directed to reinstate the petitioner in service within a month with 50% back wages payable within a month. In case of default in payment within the prescribed time, the amount will carry interest @ 9% from the date of the award.

The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	:	WW1, Ms. Annie Thomas
For the 2nd Party/ Management	:	MW1, Sri V. Divakar MW2, Sri Syed Bakthiyar Hussain MW3, Ms. Siny Mary Verghese

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	07.12.2001	Letter of appreciation
Ex.W2	03.06.2006	Letter of appreciation
Ex.W3	02.01.2007	Letter of appreciation
Ex.W4	24.01.2007	Letter of appreciation
Ex.W5	01.02.2007	Letter of appreciation
Ex.W6	30.04.2008	Employee of the month certificate
Ex.W7	01.03.2010	Letter of appreciation

Ex.W8	06.07.2011	Charge Memo
Ex.W9	17.07.2011	Explanation to the Charge Memo
Ex.W10	18.07.2011	Complaint of the petitioner given to the Police and CSE issued by the Police.
Ex.W11	02.08.2011	Complaint of the petitioner given to the Police and CSE issued by the Police
Ex.W12	29.02.2012	Order of termination
Ex.W13	07.12.2011	Order in IA No. 1340 and 1341 of 2011 in Os No. 478 of 2011
Ex.W14	25.12.2011	Reply to the Second Show Cause Notice

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	Report
Ex.M2	14.09.2011	Copy of the proceedings
Ex.M3	24.09.2011	Copy of the proceedings
Ex.M4	15.10.2011	Copy of the proceedings
Ex.M5	18.10.2011	Copy of the proceedings
Ex.M6	19.10.2011	Copy of the proceedings
Ex.M7	20.10.2011	Copy of the proceedings
Ex.M8	-	Charge
Ex.M9	-	Notice
Ex.M10	-	Notice received from opposite party
Ex.M11	-	Statement of MW1
Ex.M12	-	Statement of MW2
Ex.M13	-	Statement of MW3
Ex.M14	-	Documents marked by MW1
Ex.M14(a)	30.10.2010	Mail from Annie to Siny
Ex.M14(b)	30.10.2010	Memo from RASM-Asia to Ms. Annie Thomas
Ex.M14(c)	11.10.2010	Reply to memo dated 30.09.2010 from Annie Thomas to WY-RASM ASIA – Sasichandran, P.V.
Ex.W14(d)	19.10.2010	Mail from WY-RASM ASIA-Sasichandran, P.V. to Annie
Ex.M15	-	Documents marked by MW2.

नई दिल्ली, 14 अक्तूबर, 2014

का.आ. 2750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 78/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14-10-2014 को प्राप्त हुआ था।

[सं. एल-20012/78/2012-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th October, 2014

S.O. 2750.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 14-10-2014.

[No. L-20012/78/2012-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram**,** Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act, 1947.

REFERENCE NO. 78 OF 2012

PARTIES :

The Joint General Secretary,
Bihar Colliery Mazdoor Sabha,
Kendua Bazar,PO:Kusunda, Dhanbad

Vs.

The General Manager
Kusunda Area of M/s BCCL,
PO: Kusunda, Dhanbad.
Ministry's Order No L-20012/78/2012-IR(CM-I)
dt.15.10.2012

APPEARANCES :

On behalf of the Workman/Union : None

On behalf of the Management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 28th August, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/78/2012-IR(CM-I) dt.15.10.2012.

SCHEDULE

"Whether the action of the Management of Gondudih Colliery of M/s BCCL in not regularizing Sri Kamlesh Chouhan in the post Coal Belt Operator is legal and justified? To what relief is the workman concerned entitled?"

2. Neither any Representative for Bihar Colliery Mazdoor Sabha for workman Kamlesh Chauhan nor the workman himself nor any written statement with documents filed on behalf of the workman since pending from 29.1.2013.Mr.U.N.Lal,Ld.Advocate for the O.P./ Management is present.

On going through the case record, I find three Regd.Notices dt. 20.2.2012, 08.05.2013 and 20.03.2014 were issued to the Union concerned on the address noted in the reference itself for the appearance and for filing written statements with documents in behalf of the workman, whereas the Ld.Counsel for the O.P./ Management has all along been representing the O.P./ Management. The Union Representative and the workman by their own conducts manifestly appear to be quite unwilling to contest the case for its finality. Under these circumstances, it appears that there is no longer the Industrial Dispute existing, so the case is closed, and accordingly an order of 'No Dispute' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2751.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 43/ 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12011/64/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2751.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/ 2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12011/64/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO 43 OF 2013

PARTIES :

The Dy. General Secretary,
Bank of India Employees Association,
C/O Bank of India,
Barwadih Branch,
PO & Distt: Giridih

Vs.

The Zonal Manager,
Bank of India, Bokaro Zone,
City Centre, Bokaro,

Order No. L-12011/64/2012-IR (B-II) dt. 11.02.2013

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. B. K. Tiwari, Sr. Manager

State : JHARKHAND Industry : Banking

Dated, Dhanbad, the 9th April, 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-12011/64/2012-IR(B-II) dt.11.02.2013.

SCHEDULE

"Whether the action of the Bank of India, Bokaro Zone in not considering the request of Sri Sitaram for transfer at Sihodih Branch, ignoring his seniority, while considered the request of other workman (who happens to be member of majority union) is fair and justified? What relief the concerned workman is entitled to?"

2. Neither any Representative for Bank of India Employees Association, Giridih nor workman Sitaram appeared nor any written statement with any documents filed on his behalf despite its pending since 30.05.2013. Mr. B.K. Tiwari, the Sr. Manager is present.

Perused the case record. I find that out of the photocopies of the documents filed on behalf of the O.P./ Management, one letter dt.11.02.2013 under the signature of the workman Sitaram, the Staff Clerk, Bank of India addressed to the Zonal Manager of the said Bank, Bokaro Zone relates to the request of the workman for the closure of the Industrial Dispute raised by the Dy.General Secretary of the said Association, as he is no longer a member of the Association. The workman by his conduct appears to be reluctant in pursuing the case. Under these circumstances; the case is closed as no Industrial Dispute existent; accordingly an order of No Dispute Award is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2752.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 143/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12012/46/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O.2752 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 143/ 2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12012/46/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO 143 OF 2013

PARTIES :

The Secretary,
PNB Staff Union,
2nd Floor,Saboo Chamber,
Lallwys Complex,
Exhibition Road,
Patna-1.

Vs.

Circle Head,
Punjab National Bank,
Gaya Circle,
Dist:Gaya,

Ministry's Order No.L-12012/46/2013-IR (B-II) dt.15.07.2013.

APPEARANCES :

On behalf of the Workman/Union : None

On behalf of the Management : Ms. Neha Smriti, Management Representative.

State : Bihar Industry : Banking

Dated, Dhanbad, the 19th June, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/46/2013-IR (B-II) dt.15.07.2013.

SCHEDULE

"Whether the workman Sri Indrajit Kumar who has been workings part time sweeper on consolidated wages for more than 5 years in the chandchaura branch of Punjab National Bank is entitled to be regularized as part time sweeper? What relief he is entitled for?"

2. Neither any representative for the P.N.B Staff Union, Patna-1 nor workman Indrajit Kumar appeared or filed any written statement with documents.Ms.Neha Smriti-12, H.R.D Officer as a Representative for the O.P./ Circle Head, P.N.B., Gaya is present.

On perusal of the case record, I find Mr.Umesh Kumar Verma, the General Secretary, appears to have filed twice petitions dts. 29.4.14 and 22.5.2014 for the workman for the closure of the case as no Industrial Dispute, and for the authority of Mr.B.Prasad to represent in the case. Since the workman does not want to contest the dispute before the Tribunal. So let it be closed as no Industrial dispute existent between both the parties. Hence an Award of 'No Industrial dispute' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2753.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 121/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12011/30/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2753.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12011/30/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/121/2003

Date: 26.09.2014

Party No.1 : Central Bank of India
The Zonal Manager, CBI,
Oriental Building,
First Floor,
Opp. Bharat Talkies,
Mohan Nagar,
Nagpur-440001(MS)

V/s.

Party No. 2 : The General Secretary.
Hemar Workers Union,
C/o Smt. Kamal Nayakwal,
Matrusewa Sangh, Sitabuldi,
Nagpur(MS)

AWARD

(Dated: 26th September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of the Zonal Manager, CBI, Oriental Building and their workman, Shri Abdul Rehaman Abdul Azim, for adjudication, as per letter No.L-12011/30/2003-IR (B-II) dated 29.04.2003, with the following schedule:-

> "Whether the action of the management of Central Bank of India, Nagpur Region, Nagpur(MS) in dismissing Shri Abdul Rehaman Abdul Azim, Sub-staff, Central Bank of India, Tumsar Branch from services w.e.f. 08.02.1991 is justified? If not, what relief the workman concerned is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri, Abdul Rehman Abdul Azim, ("the workman" in short) filed the statement of claim and the management of Central Bank of India, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a sub-staff by party no.1 in the year 1972 and he worked as such till the year 1991 and his service record was clean and unblemished and by the order dated 09.02.1992, the party No.1 dismissed him from services without any prior notice and false allegation was made against him of submitting false document and a show of departmental enquiry was made, but the entire departmental enquiry was rejected by the Disciplinary Authority by order dated 21.03.1991 and a fresh departmental enquiry was ordered and the Disciplinary Authority was not empowered to order a fresh departmental enquiry and such order was against the principles of natural justice and was illegal and as such, the same is liable to be set aside and at the first instance, punishment of stoppage of two annual increments was imposed against him and on the second occasion, on the same allegation, he was dismissed from services and he was punished twice for the same allegations and the same was quite illegal and in 1972, when he was appointed by party No.1 as a sub-staff no educational qualification was prescribed in the Recruitment Rules and due to his clean and unblemished service records, in 1991, after his passing of the prescribed examination, he was appointed as a full time peon and the school leaving certificate submitted by him was a genuine certificate and the said school was in existence at the relevant time and he did not take any advantage from the Bank by submitting any false school leaving certificate and the entire departmental enquiry was conducted against him basing only on suspicion.

It is further pleaded by the workman in the statement of claim that in the recruitment Rules of party No.1, there was no provision as to from which educational institution, school leaving certificate was to be obtained and the entire departmental enquiry conducted and punishment imposed against him were in gross violation of the principles of natural justice and such action of party No.1 amounted to unfair labour practice as

mentioned in the schedule V of the Act and as such, the entire action of party no.1 is liable to be quashed and set aside.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No.1 in the written statement has pleaded inter alia that the workman came to be dismissed from services by way of punishment on 09.02.1991 and the workman sat over the issue of his dismissal from service for a period of more than 11 years and he suddenly woke up and filed the application for conciliation before the ALC(central),Nagpur on 11.06.2002 and there is delay of 11years in not approaching any authority under law and the workman has not explained the delay and therefore, the reference is deserved to be answered in the negative and the reference is not maintainable. It is further pleaded by the party No.1 that the claim of the workman for reinstatement in service with back wages is totally misconceived and he has suppressed material facts and the workman was employed as a peon at Tumsar branch, prior to his dismissal from service and the workman came to be charge sheeted on 20.08.1989, by the Disciplinary Authority leveling certain serious charges of misconduct and it was alleged against him that the school leaving certificate submitted by him was a bogus certificate and a departmental enquiry was held against him and it was found that the charges levelled against the workman were true and correct and the charges were proved against the workman in the enquiry and a second show cause notice was served on the workman on 12.01.1991 and in response to the same, the workman appeared before the Disciplinary Authority and made his submissions and thereafter, it was decided by the Disciplinary Authority to dismiss him from services by way of punishment, as per the service conditions applicable to the workman and after his dismissal from services w.e.f. 01.02.1991, the workman preferred an appeal before the Appellate Authority, but the same was dismissed and after the dismissal of the appeal, the workman had also approached the Chairman/Managing Director with a mercy petition and the same also came to be rejected and all fair and reasonable opportunity was extended to the workman in the matter of the disciplinary action taken against him and the workman had submitted a school leaving certificate dated 18.07.1967 purportedly issued by Vidhya Night School showing his date of admission in the said school as 21.06.1964 and date of leaving as 30.04.1967 and the registered number of the workman was shown as 3596 in the said certificate and discharge no. as 4310 and it was certified that he had passed the 8th class, but the said certificate was found to be a bogus certificate, in as much as the above named school was not in existence during the period from 20.06.1964 to 30.04.1967 and the school was established only in 1967 and started functioning from 01.07.1968 and the registered number of the school as on 26.04.1989 was 2940 and while appearing for promotion process from the post of permanent part time safai karmachari to the post of peon, the workman submitted the aforesaid bogus certificate as proof of his educational qualification and thus gained undue benefit for himself at the time of his appointment as a peon at Tumsar Branch on 08.07.1981 and he also appeared for All India Promotion Tests for sub-staff for their promotion to clerical cadre, on the basis of the same bogus certificate and thus, he committed a gross misconduct under para 19.5 (m) of the Bi-partite Settlement, as amended up to date and therefore, it is insignificant as to whether or not, his initial employment as PTSK in the year 1971 was based on some educational qualifications and the departmental enquiry conducted against the workman was fair and proper and in accordance with the principles of natural justice and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 06.05.2014, the departmental inquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that after about 18 years of service, on 23.06.1989, a show cause memo was issued against the workman by the Regional Manager of party no.1, on the allegation of the workman submitting a bogus school leaving certificate and thereby gained benefit of appearing for promotion test for the post of peon and enjoyed the said post from 08.07.1981 and the workman in his reply dated 31.06.1989 to the said show cause memo, pointed out that the certificate produced by him was not bogus, but legal and proper and thereafter, party No.1 issued the charge sheet and directed for an enquiry against him and in the inquiry, party No.1 failed to adduce any evidence to show the non-existence of Vidya Night High school, Barse Nagar, Panchpaoli, Nagpur, but produced evidence about the recognition of Vidya Night High School, Itwari Bazar, Nagpur and in the enquiry , the party No.1 did not examine the complainant, who had made complained against the workman of submitting bogus certificate and the original letter dated 25.04.1989, on the basis of which, the allegations regarding submission of of false school leaving certificate was levelled against the workman was not produced before the Enquiry Officer and the list of the witnesses to be examined was neither filed nor given to the workman by party No.1 and though originally, a list of 10 documents was filed by the management representative, additional documents were filed in the enquiry, before the Enquiry Officer and copies of the

letters issued by the party No.1 to the secretary of Bahujan Dnyanotti Shikshan Sanstha dated 09.10.1989 and to the Headmaster, Vidya Night High School, Itwari Bazar were not supplied to the workman and important documents were not produced in the inquiry and though the Enquiry Officer by his findings dated 15.03.1990 had pointed out that the charges against the workman were not proved, the Disciplinary Authority again directed the Enquiry Officer to submit his fresh findings after recording additional evidence and the copy of the said finding report was also not supplied to the workman and the Enquiry Officer was biased and though the school leaving certificate of the workman was first forwarded to the Regional Office in 1979 and again the same was sent in 1984 and in 1987 for the examination of the clerical post, at no point of time, any allegation regarding submission of bogus certificate was made. The learned advocate for the workman by submitting the details of the evidence adduced in the departmental enquiry stated that no evidence or material was produced by party No.1 to prove the charges levelled against the workman and therefore, the dismissal of the workman based on no evidence is illegal and mala fide and the workman had filed the mercy petition before the higher authorities and waited for the result of his petition, but as he did not receive any reply, he raised the industrial dispute before Assistant Labour Commissioner (Central) and there was no delay in raising the dispute and his entire service record was clean and unblemished, so the findings recorded by the Disciplinary Authority for the dismissal of the workman are perverse and the punishment of dismissal imposed against the workman is shockingly disproportionate to the charge levelled against him and the workman is entitled for his reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for the Party No.1 that there is inordinate delay of 11 years in raising the dispute and by way of punishment, on 09.02.1991, the workman was dismissed from service and the workman sat over the matter for a period of 11 years and all of a sudden on 11.06.2002, he raised the dispute before the ALC and the delay has not been explained and in absence of any explanation, it can be held that the workman is responsible for the delay and latches and on the ground of delay, the reference is to be answered in the negative and against the workman.

It was further submitted by the learned advocate for the party No.1 that by order dated 06.05.2014, the departmental enquiry conducted against the workman has already been held to be proper, legal and in accordance with the principles of natural justice by this Tribunal and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and the charges have been duly proved against the workman in a properly conducted departmental enquiry and the punishment is not shockingly disproportionate and there is no scope for the Tribunal to interfere with the punishment imposed against the workman and the workman is not entitled to any relief.

7. First of all, I will take up the contention raised by the learned advocate for the party No.1 regarding the delay in raising the dispute.

It is well settled by the Hon'ble Apex Court in a number of decisions that Laws of Limitation, which might bar any civil court from giving remedy in respect of lawful rights should not be applied by the Industrial Tribunal. On the other hand, it is well accepted principles of industrial adjudication that over stale claim generally should not be encouraged or allowed unless there is a satisfactory explanation for the delay.

It is also well settled that so far delay in seeking a reference under section 10 of the Act is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case. The Labour Court may decline to decide a dispute, if due to delay prejudice has been caused.

By applying the settled principles as mentioned above to the case in hand, it is found that on the facts of the case, the delay in raising the dispute is not so culpable to deny the relief to the workman, in case it will be found that he is entitled for the same.

8. In view of the submissions made by the learned advocates for the parties, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, by the Hon'ble Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:-

> "The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own

discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

The disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court/Tribunal. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

9. At this juncture, I think it proper to mention that the submission made by the learned advocate for the workman that in his first report, the Enquiry Officer had held the workman not guilty of the charges and the Disciplinary Authority did not accept the report of the Enquiry Officer and asked the Enquiry Officer to submit fresh report after taking further evidence had already been considered at the time of deciding the preliminary issue of the fairness of the departmental enquiry and as such, there is no scope for reconsideration of the same. It is also to be mentioned that the submissions made regarding the validity or otherwise of the departmental enquiry cannot be considered again as by order dated 06.05.2014, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice.

10. Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

On perusal of the record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The Enquiry Officer has analyzed the evidence on the record of the departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the Enquiry Officer are not as such, which cannot be arrived at by a reasonable man on the materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the Enquiry Officer are totally against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

12. So far the question of proportionality of the punishment is concerned, it is to be mentioned here that in a number of decisions, the Hon'ble Apex Court have held that a bank employee has to exercise a higher degree of honesty and integrity. The charges against the workman are serious in nature, which have been proved against him in a properly conducted departmental enquiry. So, the punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate, calling for any interference. Hence, it is ordered:-

ORDER

The action of the management of Central Bank of India, Nagpur Region, Nagpur(MS) in dismissing Shri Abdul Rehaman Abdul Azim, Sub-staff, Central Bank of India, Tumsar Branch from services w.e.f. 08.02.1991 is justified? The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2754.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 29/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12011/46/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2754.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/ 2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12011/46/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/29/2011

Date: 24.09.2014

Party No.1 (a) : The General Manager (HRD)
Central Bank of India, Chandermukhi,
Nariman Point,
Churchgate Reclamation,
Mumbai-400001.

(b) Zonal Manager,
Central Bank of India,
Zonal Office,
Oriental Building,
Kamptee Road,
Nagpur-440001.

(c) Regional Manager,
Central Bank of India,
Regional Office, Kalabhawan,
Vidyut Colony, NH No. 6,
Jalgaon-424101

V/s.

Party No. 2 (a) : Shri H.V. Pathak,
Plot No.114, Aadarsha Nagar,
Haripur Road, Opp. Gayake Nagar,
Chalisgaon,
Distt. Jalgaon (MS)-424101.

(b) General Secretary,
Central Bank of India Employees
Union, M-1, Saraf Court,
Yashwant Stadium, Dhantoli,
Nagpur-12

AWARD

(Dated: 24th September, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their workman, Shri H.V. Pathak, for adjudication, as per letter No.L-12011/46/2011-IR (B-II) dated11.11.2011, with the following Schedule:

> "Whether the action of the management of Central Bank of India in terminating the services of Shri H.V. Pathak, the then Head Cashier of Chalisgaon Branch without notice w.e.f. 01.11.2007 is legal and justified? What relief the concerned is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri H.V. Pathak , ("the workman" in short) filed the statement of claim and the management of Central Bank of India ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he joined in the service of party No.1, upon his selection as a clerk w.e.f. 23.04.1984 and posted at the Regional Office, Jalgaon and subsequently, he was posted at Kajgaon as a clerk-cum-Assistant cashier and due to his unblemished service, he was transferred to Wadhode branch w.e.f.17.04.1995 to work as a Head cashier "E" category and he was transferred to Pimparkhede on 09.06.1997 and then to Chalishgaon branch on 05.12.2001, in the same capacity and for all these years, he rendered unblemished service and he did not commit any illegal act amounting to misconduct. The further case of the workman is that Pimparkhede was a village and there was no regular branch of party No.1, as the number of account holders were less and the policy of the Bank was to send a cashier and one peon to village Pimarkhede twice in a week to discharge their duties and perform the transactions and he was doing cashier's duties as such, during the year 2006 and on 13.02.2006, while performing his duties at Pimparkhede office, one villager, namely, Shri Bandu Chindu More, who was illiterate and having AC No. 1046, came to the Bank for withdrawal of an amount of Rs. 3000/- and as Shri More was illiterate, as per his instructions, Mr. Yunus Sheikh, the Daftari filled in the withdrawal slip and Shri More put his LTI on the same and presented the same before him and he ascertained from Shri More about withdrawal of the amount of Rs. 3000/- and upon Shri More's concurrence, he carried out the posting in the ledger accounts and made payment of Rs. 3000/- to Shri More and there was no over writing either in the withdrawal slip or in the ledger accounts and everything was entered properly, but he inadvertently, failed to make entry in the pass book of Shri More in that regard and Shri More also failed to take note of the same and on 06.03.2006, when other official of party No.1 visited Pimparkhede office, Shri More updated his passbook and after a period of 17 days, from the date of entry made in the passbook of Shri More, i.e. on 20.03.2006, Shri More through his son made a complaint to the Branch Manager of Chalisgaon branch against him, stating that on 13.02.2006, he actually received an amount of Rs.1000/- and not Rs.3000/- and on receipt of the complaint from Shri More, on 26.08.2006, he was served with a memo issued by the Regional Office, Jalgaon vide letter No. RO/HRO/DAD/06-07/507 and it was alleged in the said memo that by paying Rs.1000/- only to Shri More, he pocketed Rs. 2000 illegally and deliberately did not make entry in the passbook of Shri More on 13.02.2006 and

such allegations were made against him relying on the words of Shri More, without verifying the documents of the Bank and in said memo, it was also mentioned that his said act was against the interest of the Bank and constituted major misconduct in terms of clause 5(j) of the memorandum of settlement on disciplinary action procedure and the same was viewed seriously and he was directed to submit his explanation as to why disciplinary action should not be initiated against him, within a period of 15 days from the date of receipt of the said memo and he received the said memo at Lohara on 07.09.2006 and on 20.09.2006, he submitted his explanation to the Regional Manager denying the allegations levelled in the memo and stating that the complaint made by Shri More to be false and to close the matter.

It is further pleaded by the workman that on 17.11.2006, the Disciplinary Authority issued the charge sheet against him for the alleged misconduct, holding his explanation dated 20.09.2006 to be unsatisfactory and one Mr. M.V.V.S.V. Prasad, the branch manager of Bamnod branch came to be appointed as the Enquiry Officer and the departmental enquiry was conducted against him, in which he participated and the enquiry was conducted for three days from 05.03.2007 to 07.03.2007, which clearly shows that it was finished in undue haste and without affording him sufficient opportunity to put forth his case and the Enquiry Officer was biased and was under the influence of party No.1 and the enquiry was not fair and on 16.03.2007, written argument was submitted on behalf of the party No.1 and he submitted his written argument on 24.03.2007 and the Enquiry Officer submitted his finding as, holding the charges to have been proved against him, to the Disciplinary Authority and on 18.04.2007, he made a representation to the Disciplinary Authority in respect of the findings given by the Enquiry Officer and on 06.09.2007, the Disciplinary Authority issued the show cause notice against him, proposing the punishment of "dismissal without notice" and directed him to submit his explanation on 20.09.2007 and on 20.09.2007, he submitted his explanation and he also submitted a representation to the Regional Manager, informing about the withdrawal of the complaint against him by Shri More and he requested the authorities to exonerate him from the charges, but the Appellate Authority concurred with the findings of the Disciplinary Authority and confirmed the order on 21.01.2008 and on 03.04.2008, he made representation to the chairman-cum-Managing Director of the Bank and requested for sympathetic action in the matter and on 05.07.2010, he made a representation to the Chief Vigilance Officer, but both the authorities did not pay any heed to his representations and the punishment of dismissal is not sustainable, being contrary to facts on record and the punishment is also shockingly disproportionate to the charges levelled against him and for that the action of party No.1is liable to be struck down and the complaint made by Shri More was belated and was made as an afterthought at the behest of his secret enemy and the action against him was motivated and was taken out of personal enmity of the Regional Manager.

The workman has prayed for his reinstatement in service with continuity, full back wages and all consequential benefits.

3. The party No.1 in the written statement has pleaded inter alia that the workman while working as Head cashier "E" in Chalisgaon branch, serious lapses on his part in discharging his duties came to the fore and there was serious complaints of misbehaviors with customers, mal practices like misappropriation and pocketing of cash etc. against him, for which, he was warned, cautioned, censored and finally charge sheeted and after regular departmental enquiry, he was awarded the punishment of bringing his scale of pay to a lower stage for a period of one year, which was modified to withholding of his stagnation increment for a period of one year by the Appellate Authority and inspite of such actions taken against the workman, he remained defiant in his action and he committed a serious act of misconduct, while he was deputed to the satellite branch of Chalisgaon and an illiterate customer, namely Shri B.C. More had come to the said branch on 13.02.2006 for withdrawal of an amount of Rs.1000/- from his savings bank account and the workman paid him Rs. 1000/-, but debited his account with an amount of Rs. 3000/- and pocketed an amount of Rs. 2000/- and while making payment to an illiterate customer, the workman did not take any witness and he also deliberately did not make any entry in the pass book on 13.02.2006 and later on, on 06.03.2006, the S.B. pass book was updated and the customer learned through his son about debit of an amount of Rs. 3000/- instead of Rs. 1000/- received by him and consequently the management was constrained to initiate necessary disciplinary proceeding against the workman in terms of clause 5(j) of the Memorandum of settlement dated 10.04.2002 and the workman was issued with a show cause notice to explain his conduct and on his failure to give any satisfactory reply, the charge sheet came to be issued to him on 17.11.2006 and a full fledged departmental enquiry was conducted in to the said charges, in accordance with the service Rules applicable to the workman and the principles of natural justice and the workman fully participated in the said enquiry and availed of full opportunity to defend himself and the Enquiry Officer after considering and analyzing the entire evidence, oral as well as the documentary evidence before him, came to the conclusion that the charges levelled against the workman have been proved and the Enquiry Officer submitted his report on 30.03.2007 and the copy of the report of the Enquiry Officer was sent to the

workman to submit his say and the workman submitted his say vide his letter dated 18.04.2007 and after considering the materials submitted before him, the Disciplinary Authority concurred with and accepted the findings submitted by the Enquiry Officer and second show cause notice was issued to the workman on 06.09.2007 to give his say on the proposed punishment and the workman was also given a patient personal hearing and after due consideration of his say on 20.09.2007, the penalty of dismissal was imposed on the workman, vide order dated 01.11.2007, in terms of clause 6(a) of the settlement of Disciplinary Action Procedure for the workman and the workman preferred a detailed appeal against the order of punishment imposed on him, to the Appellate Authority on 29.11.2007 and the workman was given personal hearing by the Appellate Authority on 08.01.2008 and by order dated 21.01.2008, the appellate authority confirmed the order of punishment and the punishment imposed on the workman is just and proper, considering the gravity of misconduct and his past history and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry against him, the validity or other wise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 08.05.2014, the enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that after receipt of the memo dated 26.08.2006, the workman submitted his explanation and denied the allegations levelled therein and also categorically mentioned that the amount of Rs. 3000/- was made to Shri More and Shri More also acknowledged the receipt of the said amount by putting his thumb impression at the back of the withdrawal slip and the complaint made by Shri More to be false and the workman also requested to the Regional Manager to close the matter, but party No.1 issued the charge sheet and conducted the departmental inquiry and the enquiry was conducted in three days in a haste and without affording sufficient opportunity to the workman to put forth his case and on 20.09.2007, the workman submitted his reply to the second show cause notice and on the same day, the workman through his defence representative informed the Regional Manager about the withdrawal of the complaint against him by Shri More, by submitting a representation, attaching the withdrawal letter of Shri More dated 19.09.2007 with the same and requested the authorities to exonerate him from the charges, but the authorities did not pay any heed to his request and he was dismissed from service by the Regional Manager and the order of dismissal passed by party No.1 is not sustainable being contrary to facts on record and the punishment is also shockingly disproportionate to the charges levelled against the workman and the Enquiry Officer as well as the Disciplinary Authority did not look into the documents maintained by the Bank i.e. the ledger book, withdrawal slip and other documents, which did not have any cutting or over writing and were very clean and perusal of the said documents would have demonstrated that the workman had not committed any misconduct and the party No.1 seems to have over looked those documents and has victimized the workman and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for the party No.1 that by order dated 08.05.2014, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and the Enquiry Officer after considering and analyzing the entire evidence on record of the departmental enquiry came to the conclusion that the charges levelled against the workman have been proved and the materials on record clearly demonstrate that this is not a case of no evidence or that the findings arrived at by the Enquiry Officer are not as such, which cannot be arrived at by a prudent man on the evidence on record of the enquiry and as such, the findings of the Enquiry Officer and the decision taken by the competent authorities cannot be said to be perverse and the workman had been warned and punished previously for committing malpractices and misappropriation and he did not have an unblemished service record and the punishment imposed is quite proportionate and the same is not at all shockingly disproportionate and the workman is not entitled to any relief.

7. In view of the submissions made by the learned advocates for the parties, before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, by the Hon'ble Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty

can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

The disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court/Tribunal. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

8. Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

On perusal of the record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The Enquiry Officer has analyzed the evidence the evidence on the record of departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the Enquiry Officer are not as such, which cannot be arrived at by a reasonable man on the materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the Enquiry Officer on totally against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

9. So far the question of proportionality of the punishment is concerned, it is to be mentioned here that in a number of decisions, the Hon'ble Apex Court have held that a bank employee has to exercise a higher degree of honesty and integrity. Contention that the account holder had withdrawn his grievances would not condone the misconduct. The charges against the workman are serious in nature, which have been proved against him in a properly conducted departmental enquiry against him. So, the punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate, calling for any interference. Hence, it is ordered:-

ORDER

The action of the management of Central Bank of India in terminating the services of Shri H.V.Pathak, the then Head Cashier of Chalisgaon Branch without notice w.e.f. 01.11.2007 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2755.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 04/ 2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12011/88/2005-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2755.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/ 2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12011/88/2005-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 04 of 2006

Parties: Employers in relation to the management of Punjab National Bank

AND

Their workmen

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal Industry : Banking

Dated: 19th September, 2014

AWARD

By Order No.L-12011/88/2005-IR(B-II) dated 05.01.2006 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Punjab National Bank by not accepting Shri Sanjoy Sukhla as pension optee as per the pension regulations of the bank is legal or justified? If not, what relief the workmen concerned are entitled to?"

2. When the case was called out on 21.07.2014, none appeared on behalf of either of the parties. It appears from the record that the union also did not turn up on the previous date.

3. Considering the above facts and circumstances, it appears that the union is not at all interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. Accordingly, the instant reference case is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 19th September, 2014.

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2756.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, धनबाद के पंचाट (संदर्भ संख्या 203/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12012/295/98-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2756.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 203/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Dena Bank, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12012/295/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act,1947

REFERENCE NO 203 OF 1999.

PARTIES :

Shri Kali Rout, Workman,
Rarhiya Branch, Dena Bank,
PO: Rarhiya, Distt : Deoghar

Vs.

Asstt. Gen. Manager,
Dena Bank, 225-C,
A.J.C. Bose Road,
Kolkata-20,

Ministry's Order No.L-12012/295/98/IR (B-II) dt.13.5.1999.

APPEARANCES :

On behalf of the workman/Union : Mr. S.N. Goswami, Ld. Advocate

On behalf of the Management : Mr D.K.Verma, Ld.Advocate

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 17th June, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/295/98-IR (B-II) dt.13.5.1999.

SCHEDULE

"Whether the action of the Management of Dena Bank in terminating the services of Sh.Kali Rout, casual workman at Rarhiya Branch w.e.f. 31.03.1994 was not justified and whether repeated termination of the services of the workman on various dates from 1995 to 1997 amounts to the unfair labour practice ? If so, what relief the workman is entitled?"

On receipt of the Order No L-12012/295/98-IR (B-II) dt.13.5.1999 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 203 of 1999 was registered on 10th June, 1999 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with

the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Advocates appeared in, and contested the case.

2. The case of workman Kali Raut, an unemployed youth of weaker section of village Rarhiya was engaged with assurance of his absorption by Sri A.K.Sinha,the then Branch Manager since inception of the Branch. He began to work from 10.30 a.m. to 5.45 pm. from 26.12.1992 on meagre wages of Rs. 20/- per day later on enhanced to Rs. 25/- from April,1993 and continued to work till 31.3.1994 against a permanent post of only subordinate staff at the Branch of the Bank. His duties were cleaning of tables, keeping a ledger on the counter from the Almirah keeping it back after day's work, carrying and delivery of the posts in the post office and to district establishment as per post delivery register, as well as serving water to the staff and the customer of the Bank. He had put in more than 240 days of his continuous service in a year under Sec. 25 of the Industrial Dispute Act 1947. The Bank Management used to take work from him but used to pay in the names of other ten unemployed persons Rashid Turi and others. But he was orally terminated from his service on and from 31.3.1994 without any reason, a notice and retrenchment compensation. He was again engaged in the 1995 to 1997, but repeatedly terminated after some breaks with a view to debar from continuity of his services. On his notice and legal notice dt. 10.7.1997 and 16.09.1997 to the AGM and the C.M.D. concerned respectively, the Bank Management responded that the workman neither had ever worked nor was engaged at Rarhiya Branch, so no consideration for reinstatement arose. Though on the report called for by the AGM over the notice dt.16.09.997, the Branch Manager concerned had sent his reply about the working days of the workman from 16.12.1992 to 1997 by putting more than 240 days continuous service in a year 1993.But it was ignored by the AGM, Calcutta. Even at the time of opening three Branches of the Bank at Darbhanga, Muzaffarpur and Samastipur, despite the detailed report of the Branch Manager about the working days of the workman for 240 days, he was not reinstated in the existing vacancies nor given a chance for re-employment.

At last, the workman raised the Industrial dispute before the A.L.C.(C), Patna on 12.01.1998 but its failure in conciliation due to adamant attitude of the Management resulted in the reference for adjudication. His termination on 31.03.1994 was retrenchment without following its mandatory provision under Sec. 25 F of the Act; and likewise repeatedly his engagement and termination by the Management from 1995 to 1997 is unfair, unresonable and illegal. So the workman is entitled to reinstatement with full back wages with 12 % interest.

The workman in his rejoinder has specifically denied the allegations of the O.P./Management

3. Whereas challenging the reference as misconceived unsponsored by a Union the pleaded case of the O.P./ Management with categorical denials is that the workman has himself admitted to be casual. A casual does not have any granted right of employment. There is no legal bar to engagement of casuals in any establishment in exigencies. The first Bipartite Settlement dt.19.10.1966 under clause 20.7 provides for engagement/employment on temporary basis as per the requirement and exigency in the Bank. The workman was intermittently engaged as a casual in exigencies. He used to perform odd and misc jobs as casual on a particular day. But when there was no need of the alleged workman as casual, he was not engaged further. Merely being his unemployment and belonging to as weaker section can not be a basis for his employment or continuance as a casual against the recruitment procedure of the Bank. The Bank frames the recruitment rules for the post of subordinatets, having regard to the reservation policy and requirement of the Employment Exchange Act. Norms for educational qualifications and age for recruitment are prescribed under the rules. According to the Recruitment procedure, the Bank has to call for the names of the candidates fulfilling the said norms from the District Employment Exchange, and for interview, the panels of the candidates are drawn to be engaged whenever there is a leave vacancy of temporary nature in subordinate cadre. While filling up permanent full time vacancies in the subordinate cadre, the existing permanent part time cleaner on scale wages shall be given preference in terms of Para 18(4) of the Bipartite Settlement dt.10th April 1989.Providing manpower to the new Branches to be opened is in accordance with the Bank's prescribed norms under which the existing part time cleaners /part time sub staff in subordinate cadre get preference against the vacancy, if approved by the Authority. In pursuance of the Policy decision at times taken by the Bank Management, altogether 2086 workmen including 520 subordinate staff have got their voluntary retirement. No vacancies in the subordinate cadre exists in the Region/State of Bihar/ Jharkhand. The workman is thus not entitled to any relief at all.

FINDING WITH REASONS

4. In this reference,WWI Kali Rout, and WW2 Rashid Turi, the workman himself on behalf of the Union Representative, MWI Arup Ghosh, the Branch Manager for the O.P./Management have been respectively examined.

Mr. S.N. Goswami, Learned Advocate for the workman as per his written argument as well has to submit that workman Kali Rout had continuously worked as the Sub-staff on daily wages Rs.20/- - Rs.25/- at Dena Bank,Rarhiya Branch,Deoghar,since his engagement by Mr. Ajay Kumar Sinha,the Branch Manger thereof on 26.12.1992 upto 31.3.1994 against a permanent vacancy, by putting it more than 240 days in each year; thereafter he accordingly served as the sub-staff of the Bank in the year 1995 to 1997 as per the Bank's statement (Ext.W.5 in seven sheets) before the ALC©, Patna, but the O.P./ Management illegally terminated his service. Further submitted on his behalf that even on his representation (demand Notice and Legal one) through Regd.Posts (Extt. W.1 & 2 with Regd. Posts (Extt. 1/1 and 2/1 respectively), the management though replied as per their letters (Ext.3 & 3/1) yet did not regularize him in the service; and finally the failure in the conciliation before the A.L.C. ©,Patna (Ext.W.6) in the Industrial Dispute raised on his application (dt.Nil - Ext W.4) resulted in the reference for adjudication. Mr. Goswami, Learned Counsel for the workman has, relying upon the ruling : 2005(106) FLR 1171 (Jhr). MNGT.F.C.I. Vs. Union of India submitted, as held therein, that where evidence adduced established that the workmen had worked for more than 240 days in one calendar year, and persons similarly situated were regularized by the Management, but the sudden termination of respondents service without compliance with Section 25F of the Industrial Dispute Act,1947 was illegal retrenchment, the Awards given by the Central Industrial Tribunal in favour of casual workman for reinstatement with full back wages and regularization do not call for any interference.(Para 1 to 5).

5. In response to it, Mr. D.K. Verma, Ld. counsel for the O.P./Management has contended that admittedly the workman has been casually engaged on daily wages but he never completed 240 days in any calendar year during the period 1992 to 1997 nor his name was called for from the Employment Exchange for the consideration of his employment as such, the payment of his wages was made through the vouchers for his work whenever deployed. The admission of the workman requires no proof as to the status of the workman as a Daily casual worker as established by the then Branch Manager of Deena Bank concerned Arup Ghosh (MWI) on behalf of the O.P./Management, so the casual working never confers any right on the workman for his claim in respect of his employment in the service of the Bank.

Having meticulously studied the materials of both the parties available on the case record, it appears that the workman Kali Rout (WWI) has admitted in his chief itself his frequent engagement and stoppage of his work by the Management left so scope for him to put his attendance for 240 days in each year; neither any letter of appointment was issued to him as the sub staff by the management But the ruling cited by Mr.Goswami relates to proof of 240 days working and the regularization of similarly situated persons ,the both facts are not in the present reference, so it is inapplicable.

At this point it is the settled law as held by the Hon'ble Apex Court in the case of Secy. State of Karnatake Vs. Uma Devi (13) 2006 SCC (L & S) 7539CB) that an appointment /engagement on daily wages or casual basis comes to an end when it is discontinued, such temporary or casual engagement is against the constitutional scheme of public enmployment.This view has also been endorsed by the Hon'ble Apex court in the case of Pinaki Chatterjee & Ors Vs. Union of India & Ors reported in (2000) SCC (L & S) 259 (DB) .In such situation it stands clear there is no application of alleged termination/ retrenchment of the workman u/s 25 F of the I.D. Act, 1947, as he had never completed the minimum requisite days of working in a calendar year even as casual daily wager as required u/s 25 B (2)(a)(ii) of the I.D. Act.

In result, it is hereby responded and awarded in the terms of Reference that the question as to the alleged action of the Management of Deena Bank in terminating the services of Shri Kali Rout concerned workman at Rarhiya w.e.f. 31.3.1995 neither arose nor arises; likewise any question of alleged repeated termination of his services on various dates from 1995 to 1997 does not arise nor it amounts to any unfair labour practice in respect of such casual workman, as the workman was a casual daily wager in exigency, otherwise his unengagement by the O.P./Management amounted to his discontinuance for a work. The reference has no merits whatsoever. Hence the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 16 अक्तूबर, 2014

का.आ. 2757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 72/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 15-10-2014 को प्राप्त हुआ था।

[सं. एल-12012/107/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th October, 2014

S.O. 2757.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/ 2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the

industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 15-10-2014.

[No. L-12012/107/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO.72 OF 2002

PARTIES :

Sri Mangal Singh Soy (workman)
PO : Kuchai, Dist : Saraikela, Kharswan

Vs.

The Zonal Manager, Bank of India,
Bistupur, Jamshedpur

APPEARANCES :

On behalf of the Workman : Mr. D. Mukherjee, Ld. Advocate

On behalf of the Management : Mr. S.K. Chamaria, Ld. Advocate

State : Jharkhand Industry : Banking

Dhanbad, Dated, the 30th October, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/107/2002(IR(B-II) dt.26.9.2002

SCHEDULE

"Whether the action of the management of Bank of India, Bayang Branch in terminating the services of Shri Mangal Singh Soy is justified ? If not,what relief the concerned workman is entitled to?"

2. The case of workman Mangal Singh Soy in brief is that he has though been continuously working as a permanent sweeper since his original appointment in Dec.,1991, yet unfortunately shown temporary /casual one by the Nationalized Bank. He had put in more than 240 days attendance in each calendar year .The management neither regularized his service nor paid him as a regular employee, though he was paid his wages through voucher to camouflage the real issue. At the demand of the workman for regularization and other benefits at par with permanent employees, the anti-labour management stopped him from service from 2001. The action of the management in illegally terminating his service in violation of Sec. 25 F and principle of natural justice was unjustified, against which he had also represented to the management. At last, the industrial dispute raised by the Union u/s 2A of the I.D. Act before the ALC ©failed, resulting in the reference for an adjudication.

The workman did not file any rejoinder on his behalf in the case.

3. Whereas with categorical denials, the contra pleaded case of the O.P./management is that neither the workman was a workman under the I.D. Act nor any employer-employee relationship ever existed between the management and the workmen. As per the employment procedure of the service of the Bank, no Branch Manager/ Office of the Bank empowered to recruit or appoint any person on the rolls of the Bank to his choice. The constitutional provisions related to employment in Public Sector Undertaking is required to call for the names of the candidates from the Employment Exchange at the time of recruitment. But the workman was never appointed in the service of the Bank in accordance with recruitment procedure by the Competent Authority, nor terminated, so there exists no dispute of any kind with the workmen, nor its reference made merely on the same individual complaint is sustainable. The person has failed to produce any appointment any interview letter, any Pay slip, any letter of forwarding his name to the Employment Exchange or any authorization letter of the Regional Manager for it. In such situation, neither the question of his termination w.e.f. 25.8.2001 nor application of Sec.25 F of the I.D. Act, 1947 to the case arises..

Further it is alleged on behalf of the O.P./ Management that the person concerned was intermittently engaged on casual basis as and whenever required in the Bayang Branch of the Bank to work as a Coolie for cleaning for an hour or two in a day. He never completed 240 days working in a period of twelve months. He was never engaged against any permanent vacancy or any sanctioned post.

FINDING WITH REASONS

4. In the case, WWI Mangal Singh Soy, the workman himself has been examined for his own sake and fully cross- examined by the O.P./Management, but no witness could be examined on behalf of the O.P./Management.

Mr. D. Mukherjee, Learned Sr.Advocate for the workman submits that the workman has fully proved his case that he had been regularly working as a sweeper for 8 years since his appointment from Dec., 1991 until he was stopped from working from Spt., 2001 ; so his termination is totally illegal, and without any enquiry;

and in view of the status of the workman as a casual as admitted in paras 10 and 11 of the written statement of the O.P./Management, there is a clear proof of the employer-employee relationship in the case; thus the workman is entitled to reinstatement in the service of the Bank concerned.

In response to it, Mr. S.K. Chamaria, Ld.Advocate for the O.P./Management has contended that in the face of the admission of the workman himself as a temporary one, the term 'retrenchment' nor 'termination' under Sec. 25 F read with Sec. 2(oo) of the Industrial Dispute Act,1947 is not applicable to the present case; besides the workman has admitted neither to have got any appointment letter for the job against any advertised vacancy, nor faced any examination or an interview, so no question rises about the alleged termination of the workman.

On serene perusal and consideration of the oral and documentary evidence of the workman Mangal Singh Soy, it is quite undisputed fact that the workman was a part time sweeper who was paid his wages through vouchers as evident from the copy of the voucher dt.03.07.1995 Ext. W.4 (with objection) for consolidated wages Rs. 225 for the month of June, 1995. None of the photocopies of Inter-office Memos. (Extt.W.1 series)admittedly by ineligible proves the continuity of his part time service; likewise the two photocopies of Staff Bio-data (Extt.2 series) admittedly partially legible do not prove the dates of birth and alleged appointment of the workman; and the photocopy of the Peon Delivery Book (dt.14.07.1999-Ext.W.3) being unauthenticated and vague is unacceptable.

In the instant case, the workman has neither pleading nor proof of having completed one year of continuous service in the Bank of India, Bayang Branch; he has firstly failed to prove that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months had worked for not less than 240 days ,then his case could be considerable as held in the case Sur Enamel and Stamping Works Ltd. Vs. their workmen 1963(7)FLR 236(SC).

The fulfillment of the conditions, i.e., the continuous service for not less than one year under an employer is precedent to the retrenchment of the workman under Sec.25 F of the I.D. Act, 1947, otherwise the alleged retrenchment/termination fails to affect. In the instant case where there is no proof of continuous service for one year – preceding the date of the reference, there is no question of termination.

It is hereby responded/ordered that the Award be and the same is passed that in utter failure of the workman to prove his continuous service for one year, the question as to the action of the management of Bank of India, Bayang Branch in termination of the services of Sri Mangal Singh Soy as justified or unjustified does not arise. Hence, the workman concerned is not entitled to any relief.

KISHORI RAM, Presiding Officer

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